

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF NEW MEXICO
3 UNITED STATES OF AMERICA,
4 Plaintiff,
5 vs. NO: CR-15-4268 JB
6 ANGEL DELEON, et al.,
7 Defendants.

8
9 Transcript of excerpted testimony of
10 MARIO RODRIGUEZ
11 February 7 and 8, 2018
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1 Wednesday, February 7, 2018

2 THE COURT: All right. Ms. Armijo, does
3 the Government have its next witness or evidence?

4 MS. ARMIJO: Yes, Your Honor. Mario
5 Rodriguez.

6 THE COURT: Mr. Rodriguez, if you'll
7 remain standing, raise your right hand to the best
8 of your ability. Ms. Standridge, my courtroom
9 deputy, will swear you in before you're seated.

10 MARIO RODRIGUEZ,
11 after having been first duly sworn under oath,
12 was questioned, and testified as follows:

13 THE CLERK: Please be seated. State and
14 spell your name for the record.

15 THE WITNESS: Mario Rodriguez.

16 THE COURT: Mr. Rodriguez. Ms. Armijo.

17 DIRECT EXAMINATION

18 BY MS. ARMIJO:

19 A. M-A-R-I-O, R-O-D-R-I-G-U-E-Z.

20 Q. Good morning, Mr. Rodriguez.

21 A. Good morning.

22 Q. Mr. Rodriguez, are you an SNM Gang member?

23 A. Yes, ma'am.

24 Q. When did you join the SNM?

25 A. In 2006.

1 Q. And what is the SNM?

2 A. It's the most violent, dangerous criminal
3 organization in New Mexico. It's based within the
4 prison system and outside, and it has ties to other
5 criminal organizations throughout the United States.
6 Its sole -- it's based around violence.

7 Q. Now, I said SNM. What is its full name?
8 Let me back up. I am referencing SNM. Does that
9 stand for anything?

10 A. Sindicato de Nuevo Mexico.

11 Q. I'm sorry, could you say that again?

12 A. Sindicato de Nuevo Mexico.

13 Q. And now, have you previously denied that
14 you're a gang member?

15 A. Yes, ma'am.

16 Q. Tell us about that.

17 A. Well, you're not supposed to admit it.
18 It's just not something you do. You don't admit
19 that you're a gang member, no matter what. And I
20 didn't admit to it. It's just something that
21 doesn't come natural.

22 Q. Now, who brought you into the gang, if
23 anyone?

24 A. Arturo Garcia, James Yoakum, Juan Mendez,
25 and San Juan Silva.

1 Q. And where did this occur at?

2 A. PNM Level 6, North facility, in Santa Fe,
3 New Mexico.

4 Q. Now, are there different -- within the
5 SNM, is there a structure? Are there different
6 positions?

7 A. Yes, there is a structure.

8 Q. Tell us about that.

9 A. It's called a tabla. It's people Anthony
10 Baca appointed before he went out of state. It's
11 Arturo Garcia, Juan Mendez, Rupert Zamora, Gerald
12 Archuleta, and Baby Robert, Robert Martinez.

13 Q. Okay. Now, you mentioned Anthony Baca.

14 A. He's the leader.

15 Q. Okay. And does he have a nickname?

16 A. Pup.

17 Q. Do you see him in the courtroom?

18 A. Yes, ma'am.

19 Q. Where do you see him?

20 A. Right there.

21 Q. Okay. You say, "Right there." Can you,
22 for the record, be a little bit more specific?

23 A. Toward the back corner, sitting next to a
24 woman, and in between a man -- his lawyer.

25 Q. And what color suit?

1 A. Looks like black.

2 MS. ARMIJO: May the record reflect
3 identification of Mr. Baca?

4 THE COURT: The record will so reflect.
5 BY MS. ARMIJO:

6 Q. And you indicated that he was the leader?

7 A. Yes, ma'am, him and another individual
8 named Ramon Clark, Razer.

9 Q. Now, you talked about the tabla. What was
10 your role in the SNM?

11 A. I was a soldier.

12 Q. What's a soldier?

13 A. I was putting in work and representing the
14 SNM to the fullest, giving it my all, to uplift it
15 and never bring it down. I was very close with
16 Daniel Sanchez. I became -- you know, we had a lot
17 of respect for each other, and pretty much like his
18 right-hand man.

19 Q. Okay. You said a couple of things there
20 I'm going to ask you about. You mentioned Daniel
21 Sanchez.

22 A. Yes, ma'am.

23 Q. Do you see him in the courtroom?

24 A. Yeah. He looks a little different with
25 his hair cut. But yeah, I see him. Looks a little

1 funny. I see him.

2 Q. What is he wearing?

3 A. Glasses, with a grayish suit.

4 Q. And where is he seated?

5 A. Next to Amy Jacks.

6 MS. ARMIJO: Okay. May the record reflect
7 the identification of Daniel Sanchez?

8 THE COURT: The record will so reflect.

9 BY MS. ARMIJO:

10 Q. You indicated that he looks a little bit
11 different. I'm going to show you an exhibit.

12 MS. ARMIJO: If I may just have a moment,
13 Your Honor?

14 THE COURT: Certainly.

15 Q. I'd like to display Exhibit 560. I think
16 we're on the Elmo still. Can you see that picture,
17 Mr. Rodriguez?

18 A. Yes.

19 Q. Who is that?

20 A. That's Daniel Sanchez.

21 Q. All right. And is that how he appeared in
22 December of 2015?

23 A. Yes, ma'am.

24 Q. All right. Now, you indicated that you
25 were a soldier and you put in work. What do you

1 mean by that?

2 A. Anything the S needed me to do, I was
3 willing to do it. Anything that -- ice an enemy. I
4 don't care if there's cameras on, COs around. If I
5 had a weapon, I would stab them or assault them.
6 Anything the S -- within the S, any enemies,
7 anything I need to do, I would do it.

8 Q. All right. Now, tell us what type of
9 crimes, if any, the SNM is involved in.

10 A. Anything based around violence, murder,
11 extortion, kidnapping, assaults, distribution of
12 drugs, weapons. Anything to bring in money. Just
13 all criminal activity, pretty much.

14 Q. Now, in your mind, did the SNM have a
15 philosophy?

16 A. Yes.

17 Q. What philosophy is that?

18 A. Well, you're supposed to be a carnal
19 first, a brother first. Never politic against each
20 other. Supposed to have each other's back. You're
21 in a workout routine, you're studying, and trying to
22 be the best SNM member you can be, and that's --

23 Q. Now, what about rules? Did SNM have
24 certain rules?

25 A. Yes, ma'am.

1 Q. What rules do you recall?

2 A. You can't do what I'm doing here today.

3 Q. What's that?

4 A. Testifying against my homies and
5 snitching. And you can't -- no matter where you
6 are, you never deny that you're an SNM member to
7 another criminal organization. Gang members always
8 represent the S. If you go into a pod with 11
9 enemies, you got to tell them you're the S, you got
10 to come out, and you got to defend yourself and
11 assault them.

12 Q. What do you mean, come out?

13 A. When we go into a lockdown situation, come
14 out to a tier time, pop the doors to come out. No
15 matter if you're going to get killed or whatever,
16 you've got to come out.

17 Q. You mean instead of staying in your cell?

18 A. Right. But you can't be a child molester,
19 rapist. You can't have really bad charges like that
20 in order to be an SNM member. You can't be Z. Just
21 basic rules, basic criminal rules.

22 Q. You already mentioned a tabla.

23 A. Right.

24 Q. And you mentioned people on the tabla.

25 When were those people on the tabla?

1 A. When I came into the SNM in 2006, they
2 were already in place.

3 Q. Okay. And I want to mention a couple of
4 people that you've said. You mentioned Gerald
5 Archuleta?

6 A. Yes, ma'am.

7 Q. Does he have a nickname?

8 A. Does he have anything?

9 Q. No, does he have a nickname?

10 A. Oh, Styx.

11 Q. Okay. And you mentioned somebody by the
12 name of Robert Martinez, Baby Rob. And did you
13 mention Arturo Garcia?

14 A. Yes, ma'am.

15 Q. And what is his nickname?

16 A. I've always known him as Arturo, but he
17 goes by Shotgun.

18 Q. Now, you mentioned something about your
19 relationship with Mr. Sanchez.

20 A. Yes, ma'am.

21 Q. And can you describe what you were to him?

22 A. That was my big brother. I looked up to
23 him, I respected him, and I had a love and respect
24 for him. I was pretty much his right-hand man.
25 Wherever I went, where he went, I enforced anything

1 he wanted to do, because I looked up to him.

2 Q. What do you mean by "enforce"?

3 A. I was his right-hand man. If he needed
4 something done, if he needed to talk to an
5 individual he couldn't reach, and he knew I had
6 influence on that person, he would come to me and
7 ask me to speak to that person, or -- I just had his
8 back 100 percent.

9 Q. Now, is he an SNM Gang member?

10 A. Yes, ma'am.

11 Q. Now, let's talk a little bit now about
12 your background. When you came into the prison,
13 were you a member of a street gang?

14 A. Yes.

15 Q. What street gang?

16 A. East Side Folk.

17 Q. East Side Folk?

18 A. Yes, ma'am.

19 Q. And is that from the Silver City area?

20 A. Silver City, New Mexico.

21 Q. Now, I want to talk a little bit about
22 your criminal history.

23 A. Right.

24 Q. Do you have felony convictions?

25 A. Yes, ma'am.

1 Q. Where did all of the crimes occur for
2 which you received felony convictions?

3 A. In the Grant County Detention Center,
4 Silver City, New Mexico. I think I have one felony
5 conviction from the streets. I think it's a
6 burglary and larceny. But that's the only one from
7 the streets.

8 Q. Okay. How old were you when you were --
9 as an adult, how old were you when you first went
10 into -- being arrested?

11 A. I was 18 years old, straight out of the
12 juvenile system.

13 Q. Okay. Did you have a nickname?

14 A. Yes, ma'am.

15 Q. What's your nickname?

16 A. They call me Blue.

17 Q. How did you get that nickname?

18 A. From a teacher in the New Mexico Boys
19 School.

20 Q. Do you know why you got that name?

21 A. He said because I always looked like I was
22 depressed or sad. They used to call me Baby Blue,
23 and a couple of guys switched it just to Blue.

24 Q. Did that stick with you throughout your
25 time in the Corrections?

1 A. Yes, ma'am.

2 Q. Even while as an SNM member?

3 A. Yes, ma'am.

4 Q. Now, 18 years old. Where is it that you
5 are first detained?

6 A. When I first got arrested, or in prison?

7 Q. No, when you first got arrested.

8 A. In Grant County Detention Center, Silver
9 City, New Mexico.

10 Q. And did something happen there that got
11 you actually sent to Corrections?

12 A. A lot happened there. I picked up, I
13 think, five to six different cases in the county
14 jail. Do you want me to go through them?

15 Q. I'm sorry?

16 A. Five or six cases. Do you want me to go
17 through them?

18 Q. In just a moment.

19 A. Okay.

20 Q. Now, I'm going to --

21 MS. ARMIJO: Your Honor, I'm going to move
22 for admission without objection to Exhibit 238.

23 MR. VILLA: No objection.

24 THE COURT: Not hearing any objection?

25 MS. BHALLA: No objection.

1 THE COURT: All right. Government's
2 Exhibit 238 will be admitted into evidence.

3 (Government Exhibit 238 admitted.)

4 BY MS. ARMIJO:

5 Q. Now, if you can, can you tell us -- I'm
6 first going to move to -- on that exhibit. Is
7 this -- first of all, look at the first page of the
8 exhibit. Is that your name?

9 A. Yes, ma'am.

10 Q. And I don't know if you've had an
11 opportunity to see this before.

12 A. Yes.

13 Q. Are you familiar with this document?

14 A. That's a pen pack.

15 Q. Can you tell the jury what a pen pack is?

16 A. It's something that they prepare for
17 sending you out of state, your fingerprint card. It
18 goes to the NCIC in Washington -- or in West
19 Virginia. I think it's everything to go in your
20 NCIC, all your criminal history.

21 Q. Okay. And it includes your convictions
22 for which --

23 A. Yes.

24 Q. -- you went to Corrections?

25 A. And my judgment and sentence, my J&S.

1 Q. Now, I'm going to move to the fourth page
2 of that, which is Bates 8781, and are you familiar
3 with this item?

4 A. Yes, that's my J&S.

5 Q. Okay. And the J&S stands for?

6 A. Judgment and sentence.

7 Q. Okay. And up here -- and I'm going to
8 circle it -- what are all those?

9 A. Those are all the cases I picked up while
10 in the detention center in Grant County.

11 Q. All right. And so does this include all
12 of your cases that -- at the time when you were
13 sentenced that were kind of put together for one
14 sentence?

15 A. Yeah. Some of them were -- my original
16 street charge was dismissed, and one was an escape
17 that ran concurrent with the rest of them. Pretty
18 much all of them bundled into one.

19 Q. Okay. And I'm going to go to that second
20 page -- the next page, I should say. I spoke
21 poorly. It would be the page after this one. All
22 right? And tell us what we're looking at here.

23 A. These are the Count 2, 3, and 4. And
24 Count 5 was dismissed. Count 2, 3, and 4 is
25 CR-2003-213, a charge I picked up; the case I picked

1 up while in the detention center. Count 1 is
2 another charge I picked up in the detention center,
3 the battery on a peace officer, along with the
4 escaping jail.

5 Q. All right. Let's talk about that first
6 case, the 2003-213.

7 A. Okay.

8 Q. It says here that -- I believe these were
9 the charges that you have here.

10 A. Right.

11 Q. What happened during that incident?

12 A. It was an inmate who we were going to roll
13 out of the county jail. We were going to make him
14 PC.

15 Q. I'm going to slow you down just a moment.
16 Now, you said "we were going to roll out"?

17 A. Yeah.

18 Q. Was there more than just you who committed
19 this crime?

20 A. Yeah. It was four to five who were
21 originally indicted, and four of us got convictions.

22 Q. Okay.

23 A. Do you want me to name them?

24 Q. You don't have to name them. That's fine.

25 A. All right. So we were going to make him

1 go into protective custody. We find he has a
2 receipt for, like, 300 bucks. So I move him into a
3 cell with another inmate to keep him while we use
4 his money for canteen. That inmate began beating
5 him up and assaulting him. And it wasn't long that
6 pretty much the whole pod was beating him up every
7 day.

8 And on this day they were locked in a
9 cell. We were on lockdown. We were locked in the
10 cell, beating him up, playing a board game, and just
11 in the cell, tattooing. And they called me to the
12 cell. I went to the cell, which I was locked
13 into -- that's what the kidnapping was for -- and
14 proceeded to assault him, beat him up. And somebody
15 threw a hot sauce bottle in the tier, told me, "Why
16 don't you shove this in his ass?"

17 Q. I'm sorry. And what?

18 A. "Why don't you shove this in his ass?"

19 One of the guys in the other cell said --
20 so my co-defendant, Joseph Chavez, did it. He
21 shoved it in his ass. I was at the gate. I turned
22 around, and it was going on behind me. I got aiding
23 and abetting for this. I was present during the
24 commission of this crime.

25 Q. All right. And so it talks about -- there

1 is one count of kidnapping and three counts of
2 sexual penetration. And is that the incident that
3 you're talking to? Count 3 mentioned a hot sauce
4 bottle.

5 A. Yes.

6 Q. Count 4 is a lotion bottle.

7 A. Yeah.

8 Q. Okay. And did that occur, as well?

9 A. I think it did. I don't remember that,
10 but I'm pretty sure it probably did. Count 5 was
11 dismissed.

12 Q. Okay.

13 A. Yeah. If you read, go further in the J&S,
14 it will disclose that I got 15 years; nine years for
15 the kidnapping, and three years apiece for the
16 criminal sexual penetrations.

17 Q. All right. And we'll get to the next page
18 of this.

19 A. Okay.

20 Q. Now, were you the one that actually did
21 any of the penetration?

22 A. No, ma'am.

23 Q. And this was in which facility?

24 A. Grant County Detention Center, Silver
25 City, New Mexico.

1 Q. Let's go to the next incident, which is
2 the battery on a peace officer. No, wait. Go back
3 to that page. Sorry. All right.

4 Now -- thank you -- you have a different
5 cause number, CR 2004-29, battery upon a peace
6 officer in the fourth degree. Can you tell us about
7 that incident? And it says it occurred on December
8 26 of 2003.

9 A. There was an officer who, when my
10 girlfriend came to visit me at the time, was kind of
11 like harassing her a little bit, telling her why was
12 she with someone like me; that I was never going to
13 change, and she shouldn't be waiting for me. So
14 when I confronted him on it, he got kind of smart,
15 and I proceeded to try to assault him.

16 Q. Now, the last one there, it says that
17 occurred on December 26, which I believe is after
18 the prior incident that we spoke to.

19 A. Yeah.

20 Q. And then we have another case, 2003-191,
21 which is an escape that occurred actually five days
22 before the first incident you spoke about; is that
23 correct?

24 A. Yes, ma'am.

25 Q. Okay. What did you do there?

1 A. I told the Grant County Detention Center
2 that I swallowed a razor. I swallowed a little
3 piece of metal so it would come up in the x-ray
4 machine so they could house me in the hospital. And
5 during showering, the officer wasn't present to put
6 my shackles on. I looked around, he wasn't there,
7 and I took off. I took off running out of the
8 hospital.

9 Q. And were you arrested right away?

10 A. Yeah, I was.

11 Q. And how old were you when that occurred?

12 A. 2003? I was 18.

13 Q. All right. Now if we go now to the next
14 page, please. So now we're looking at page 3 of
15 your judgment. And is this what you're talking
16 about where you were only sentenced in that first
17 cause to Counts 2, 3, and 4?

18 A. Yes, ma'am.

19 Q. And if we can go to -- I'm sorry, I
20 accidentally did that. If we can go to the next
21 page. And I'm looking at page 4 of the judgment.
22 And it talks about some of your other cases being
23 dismissed as a result of that?

24 A. Um-hum, yes.

25 Q. Okay. Now, how many years did you get for

1 all of these crimes?

2 A. 18 years.

3 Q. And you were how old when you were sent to
4 Corrections?

5 A. I think I was about to turn 19.

6 Q. Now, if we could go now to part of this as
7 well, Bates 8786. Do you have another felony
8 conviction?

9 A. Yes, ma'am.

10 Q. Okay. And we're looking now at Bates
11 8786. At the bottom of the right hand of the page,
12 what incident is this?

13 A. This is an incident that occurred in Santa
14 Rosa, New Mexico, prison.

15 Q. And when did it occur; do you recall?

16 A. I think it was like May of 2006.

17 Q. Oh, actually --

18 A. This is the -- yeah, May.

19 Q. It indicates -- I just circled the first
20 day of May 2005. Does that sound correct?

21 A. Yes, that's when I went to Level 6.

22 Q. Okay. Now, where did this occur, this
23 incident?

24 A. In the Guadalupe County Prison facility in
25 Santa Rosa, New Mexico.

1 Q. So at this point you -- in 2006, you were
2 still with Corrections; is that correct?

3 A. Yes.

4 Q. But at a facility in Santa Rosa; is that
5 what you said?

6 A. Yes, in a prison in Santa Rosa.

7 Q. Do you know what level, if any,
8 classification that was?

9 A. I was a Level 3 custody, general
10 population.

11 Q. And what happened while there?

12 A. The officer for count came around and
13 asked me to stand up. I had my headphones on. And
14 he was telling me to stand up. And I told him,
15 "Fuck you."

16 And he goes -- I had my head phones on, so
17 I didn't hear what he said. So later on, when I
18 came -- I made my cellmate move that day, because I
19 was going to move an SNM member into my room. Some
20 individuals pulled me over and told me, "Why did you
21 make that guy leave?"

22 I told them, "I want to move my homie in."

23 He goes, "That's because you're a
24 chester."

25 I said, "No, I don't do that." Goes for

1 count, someone stopped by your door and calls one a
2 chester.

3 Q. What is --

4 A. Child molester. Okay. And I was, like,
5 "What?"

6 So then they -- I guess they thought that
7 was my charges. So when they came and asked for my
8 J&S, I gave it to them. They read it, said, "Okay,
9 everything is all good."

10 Q. Who is "they"?

11 A. Some inmates. A couple inmates approached
12 me and said, "We want to see your paperwork."

13 So I showed them my paperwork.

14 Q. When you say "paperwork," what are you
15 referring to?

16 A. The J&S we just went through for the
17 criminal sexual penetration.

18 Q. And why is that important, as far as you
19 having that and showing it?

20 A. It's important because whenever you go
21 somewhere, you have to show that you don't have
22 fucked-up charges, or -- say, my charges in
23 particular, I have to show that, because my charges
24 are questionable charges. See, because if that
25 would have happened on the street, some of those

1 charges can get you killed like that. So when they
2 come and ask me for those, I've got have that shit.
3 So I provide it to them. They say, "Okay,
4 everything is all good. That ain't what you are."

5 I told them, "It's not all good. That guy
6 put my life in danger."

7 So I was going to assault him. I put a
8 soda can in a sock. And when he came for count, I
9 approached him, and I beat him with it.

10 Q. All right. And did you then receive this
11 aggravated battery on a peace officer?

12 A. I did.

13 Q. All right. How long of a sentence did you
14 receive for that?

15 A. Seven years.

16 Q. And was that going to be concurrent or
17 consecutive to your time?

18 A. Consecutive.

19 Q. All right. So now going back a little bit
20 to -- you indicated that you were at Santa Rosa. We
21 saw that you were sentenced to Corrections. Was
22 that your first time being sentenced to Corrections
23 for all of those cases?

24 A. Yes, ma'am.

25 Q. And I believe you said you were just not

1 even 19 yet, or had you turned 19?

2 A. I was about to turn 19.

3 Q. And where did they send you to?

4 A. I went to Lea County Corrections Facility
5 in Hobbs. I went to RDC first in Los Lunas.

6 Q. Do you know -- and if you don't know,
7 that's fine -- do you know what they do in Los
8 Lunas, "they" being Corrections?

9 A. They just evaluate your level, your age,
10 your crime, everything like that, and they give you
11 certain points to say what level you're going to go
12 to. If you have, like, I think it's 14 and above,
13 you go to a Level 4. Below, you go to a Level 3.
14 And below 10 you go to a Level 2.

15 Q. Is that kind of like where you go to be
16 classified?

17 A. It's where you go to get classified, yes.

18 Q. Where were you sent after you went to Los
19 Lunas?

20 A. Hobbs, New Mexico, Level 3.

21 Q. How long were you there?

22 A. About maybe five or six months.

23 Q. Where did you go from there?

24 A. I went to Santa Rosa.

25 Q. And is that where this incident that we

1 just saw happened?

2 A. Yes, ma'am.

3 Q. Now, when that happened, were you an SNM
4 member yet, or not?

5 A. No.

6 Q. Okay. I know that you were talking
7 about -- when you were describing the incident, you
8 mentioned something about SNM members.

9 A. Right.

10 Q. Were there SNM members there?

11 A. I had interaction with SNM members
12 throughout my Level 3 in Hobbs, New Mexico, and
13 Santa Rosa. And yes, there was SNM members there.

14 Q. Now, after this incident in Santa Rosa,
15 where were you sent?

16 A. To Santa Fe, New Mexico, Level 6, solitary
17 confinement.

18 Q. Was that as a result of your actions in
19 Santa Rosa?

20 A. Yes, ma'am.

21 Q. And what happened once you got to -- you
22 say, Santa Fe, New Mexico, Level 6? Which facility?

23 A. The North facility.

24 Q. And what happened there? I mean, as far
25 as, did you know people there?

1 A. I knew one person there.

2 Q. Who did you know?

3 A. Tommy Valdez. He's from Silver City.

4 He's an SNM member, or was.

5 Q. And is that when you officially became a
6 member?

7 A. No, not at that time.

8 Q. Okay. When did you officially become a
9 member in relationship to getting up to PNM North?

10 A. I think once I got there, it was all over
11 the news and everything like that, so people had
12 seen what I was there for. And Tommy Valdez started
13 spreading around my case, about what took place in
14 the county jail, because he knew me from the
15 streets. He knew me from the county jail.

16 So I would just go to yard and mind my own
17 business. I walk the square. And slowly but
18 surely, a lot of SNMers started talking to me. My
19 neighbor was Baby Robert. I lived with Carlos
20 Herrera, Lupe Urquizo, and Edward Garcia, which were
21 all SNMers in North 3-B V pod. And I started
22 hearing that they're talking about recruiting me.
23 And one day I was in the yard, minding my own
24 business; and I didn't know him at the time, but
25 Arturo Garcia comes up to me, told me, "Do you want

1 to be down with the S?"

2 Q. What did you take "being down with the S"
3 meant?

4 A. Getting recruited and then earning my
5 bones to be respected within the SNM.

6 Q. Okay. Now you mentioned you didn't know
7 who he was at the time. You mentioned Arturo Garcia
8 before. What is his position in the gang?

9 A. He's a leader. He's on the tabla.

10 Q. And what did you say when he asked you
11 that?

12 A. I told him it's something to think about.
13 I'll think about it. And that was it. I started --
14 I kept walking around.

15 Q. And then did you think about it?

16 A. I thought about it.

17 Q. And then what happened?

18 A. We had a couple more conversations. We
19 had at least three more conversations where he was
20 trying to get me to jump on the ride. Everyone
21 already assumed that I was an SNM member. He was
22 telling me, "Everyone already thinks you are, so you
23 might as well get in."

24 Q. And what was your belief as to why people
25 thought you were already an SNM member?

1 A. I've had that for a while. When I was in
2 the Level 3s, there was always the rumors that I was
3 an SNM member. "He looks like an SNM member." I
4 guess the way I look, I guess.

5 Q. Did you, in fact, decide, after thinking
6 it over and Arturo Garcia talking to you, that you,
7 in fact, wanted to become a member?

8 A. One day in the yard, Eugene Martinez comes
9 to me. He's in the track, which is a cage that can
10 go and talk to all the cages in the solitary
11 confinement yard. And he comes and tells me, he
12 goes, "Arturo wants to know. It's your last time.
13 Do you want to get in or not?"

14 I told him, "Si, mon, I'll get in."

15 Q. You said "si mon."

16 A. That's yes, I'll get in.

17 Q. And I just want to know what that means,
18 "si mon."

19 A. Right. I told him yes. It means yes.

20 Q. "Si mon" means yes?

21 A. Yes.

22 Q. Okay. Now, you mentioned another couple
23 of things I just want to get clear. You talked
24 about the cages?

25 A. Yes.

1 Q. Where were you when this conversation
2 occurred?

3 A. I was in the first handball cage. There's
4 about 12 cages. There's two handball cages, there's
5 about four other cages. They go in a big square and
6 there's a -- the track isn't there anymore. They
7 took the door off it. But there is a big basketball
8 cage, and there's a track around it.

9 Q. And the persons that were on the track --
10 could they go and talk to the people in the cages?

11 A. Yeah, they can go all the way around, talk
12 to every single cage.

13 Q. And the cage that you were in -- why is it
14 that you were in the cage?

15 A. I was one of the first ones that would
16 come out -- why were we put in the cages?

17 Q. Yes.

18 A. That's where they sent everyone that's
19 violent. It's the Level 6 solitary confinement
20 yard.

21 Q. And is that outside?

22 A. It's outside, yes. It's your
23 one-hour-a-day yard.

24 Q. Okay. And what is yard?

25 A. Well, you go for yard, and there's 12

1 other people in the yard in separate cages. And you
2 go out there. There is a dip bar, a pull-up bar, or
3 you just walk around.

4 Q. Okay. That's your opportunity to
5 basically go outside?

6 A. It's the gossip place. Everyone gossips
7 about each other.

8 Q. But if you're Level 6 -- and were you
9 Level 6 at that time?

10 A. I was.

11 Q. Okay. And so you were subject to extra
12 restrictions?

13 A. Yes, ma'am.

14 Q. And is that why you were in the cage, so
15 to speak?

16 A. Yes.

17 Q. Now, once you became an SNM member, what
18 sort of things did you do for SNM?

19 A. Arturo wanted me to be on the low-low. He
20 didn't want no one to know that I was an SNM member.
21 Undercover. He didn't want no one to know. There
22 was a time for a whole year that SNMers were
23 stabbing COs, and he didn't want me involved at all.
24 "Don't get involved because you need to go back to
25 Level 3."

1 He wanted me to put in work on a Burqueno
2 or Sureno.

3 Q. Now, if people did not -- if Corrections
4 did not know you were an SNM member, when you say,
5 "Go back down to Level 3," what do you mean?

6 A. Okay. So there is a process for SNM
7 members. There is a process for general population
8 inmates. If I'm in the Level 6, I'm a general
9 population inmate, not validated or suspected, I'm
10 able to proceed through all the steps. If you're a
11 validator or suspected SNMer, you can only go to
12 Level 4 and live with your own population, which is
13 SNM members.

14 So what Arturo wanted me to do is go
15 through the process and make it back out to Level 3
16 line, where all the enemies were.

17 Q. And was that something that you tried to
18 do?

19 A. I did. I stayed out of trouble for a long
20 time, trying to get out.

21 Q. And when you say "stay out of trouble,"
22 what do you mean by that?

23 A. I didn't go over my phone call limits,
24 behavior logs. I didn't get write-ups. I was just
25 straight, trying to do the program and get out, so I

1 can go do the work so I could prove to the S that I
2 was down.

3 Q. And did you actually do that?

4 A. No.

5 Q. What happened?

6 A. All right. So about 2008, I go for
7 recommendation, because when I got to Level 6, I
8 told them, "How long is it going to take to get out
9 of here?"

10 They told me, "Three years."

11 Q. When you say "they" --

12 A. Classification. They told me up to three
13 years. So I did three years clear conduct, and they
14 denied me. They said that because of the nature of
15 the crime that I was in Level 6 for, that they
16 feared for the security of the prison, the
17 institution; so not let me out.

18 I was involved in a little bit of drug
19 trade at the time. A guy burned me for \$900. And
20 me, being an SNM member, knew that once that got
21 out, that I let someone burn me, then it's going to
22 lower you. So I took it upon myself to get a weapon
23 and stab him.

24 Q. Okay. Now, you mentioned a couple things
25 I'm going to go back and talk about.

1 A. Okay.

2 Q. You mentioned that you were involved in
3 drug activity.

4 A. Right.

5 Q. Okay. When are we talking about? What
6 approximate year is this?

7 A. This is 2008.

8 Q. And what do you mean by drug activity?

9 A. Bringing drugs into the institution
10 through COs and using.

11 Q. Is that something that is common in the
12 SNM?

13 A. Yes, ma'am.

14 Q. Now, you mentioned that somebody had
15 burned you. What do you mean by that?

16 A. He didn't pay his debt to me. I kept on
17 giving him, waiting for the money to come through,
18 and eventually I cut him off.

19 Q. Okay. So were you supplying drugs to him?

20 A. Yes.

21 Q. And where were you getting the drugs from?

22 A. At the time, me and another SNM member
23 were working with two LC members to bring in drugs
24 together through a CO.

25 Q. Okay. And so this person ended up burning

1 you for, as you say, not paying you?

2 A. He didn't pay me.

3 Q. Okay. Now, what significance did that
4 have within the SNM?

5 A. Well, he's going to start bragging around
6 that he burned one of us, and that we didn't do
7 nothing to him, and it makes the SNM look weak.

8 Q. Is that not allowed?

9 A. No.

10 Q. So what did you do?

11 A. I got a weapon from another SNM member
12 while in yard, and I brought it to stab him. And
13 eventually one of the plots came through and I
14 stabbed him.

15 Q. And when you said stabbed him, who did you
16 stab?

17 A. Robert Esparza.

18 Q. What did you stab him with?

19 A. A sharpened piece of metal about five,
20 five and a half inches long.

21 Q. Okay.

22 A. It was a food port pin, to the food port.
23 When the food port is open, you have pins, like,
24 linchpins. Another inmate pulled it out, sharpened
25 it, and gave it to me.

1 Q. All right. And do those sorts of things
2 in prison have a name?

3 A. What is that? Shanks?

4 Q. Yes. What's a shank?

5 A. The fierro, shank, a piece. It's a
6 sharpened piece of metal.

7 Q. And were you convicted for that crime?

8 A. No.

9 Q. And where did this occur, again?

10 A. In the Level 6 PNM North, Santa Fe.

11 Q. And what year was this?

12 A. 2008.

13 Q. Did you consider that -- or let me ask you
14 this. Do you know whether or not that was
15 considered anything as far as your status within the
16 SNM?

17 A. I know two of the tabla members, Juanito
18 Mendez and Arturo Garcia, were taking credit for it,
19 telling people they had told me to do it. But it
20 just verified that I was going to go any extent that
21 was possible to prove that I was down and put in the
22 work. There is a lot of significance in the SNM to
23 do stuff like that.

24 Q. All right. Now did you stay -- that was
25 2008?

1 A. Yes, ma'am.

2 Q. Did that incident help get you moved down
3 to Level 3?

4 A. No, it did not.

5 Q. Okay. Where were you housed at that
6 point?

7 A. Same place.

8 Q. Now, what did you continue doing? We're
9 talking about 2008 and going forward. What did you
10 do for the SNM, if anything, continuing on forward?

11 A. Just the basic -- just, you know, go to
12 yard, work out, you represent -- you carry yourself
13 with respect and you respect others, so you don't
14 put a bad light on the SNM. You just -- there's
15 drug activity. There's sharpening weapons. There's
16 studying to be a better gang member. It's every
17 day, every day you're just trying to be better,
18 better and better at your craft.

19 Q. Now, during this time period, you were
20 being housed with SNM; is that correct?

21 A. The Level 6 PNM North at that time was the
22 SNM stronghold. It was -- every pod had at least
23 six to eight members in it.

24 Q. And who were you being housed with?

25 A. At the time of that assault?

1 Q. Yes.

2 A. At that time of that assault, it was with
3 a guy name Javier Manzanares and Guilardo Rodriguez,
4 and myself were in that pod.

5 Q. I'm going to move forward a little bit to
6 2011. Where are you at?

7 A. I'm at Penitentiary of New Mexico, Santa
8 Fe, Level 5. Right there -- it's a lower-level
9 right there in the same facility.

10 Q. Is it in North or the South facility?

11 A. South facility.

12 Q. And is the South facility where they
13 housed -- why don't you tell me. When you were
14 there, what --

15 A. All Level 5 custody inmates, but they have
16 designated pods for SNM members. They have
17 designated pods for Surenos. If everyone is getting
18 out of Level 6 solitary confinement, you go to tier
19 time. So you come out six inmates at a time.

20 Q. You mentioned Surenos. What are Surenos?

21 A. Surenos from California. They have New
22 Mexico Surenos. You know, they're another group,
23 Security Threat Group.

24 Q. Okay. And I guess we didn't talk about
25 this. Are there other prison gangs, other than SNM?

1 A. Yes, ma'am.

2 Q. Over the time that you've been in SNM?

3 A. Yes, ma'am.

4 Q. And you mentioned Surenos. Is that
5 another one?

6 A. I don't think it's really a New Mexico
7 prison gang, but they are a prison gang. The two
8 dominant gangs -- SNM is the dominant gang, but the
9 LC, Los Carnales, is the rival to SNM.

10 Q. Okay. And so does SNM have any rules as
11 far as over the years in reference to their rivals
12 with Los Carnales?

13 A. Yes.

14 Q. What is that?

15 A. Well, we live next to them in Level 6. We
16 have them as neighbors, and you know, there is --
17 you can treat your enemy with respect and not
18 disrespect them, and still, when the door is open,
19 try to kill each other. There is honor in that. In
20 SNM, there is a lot of honor in that, the way you
21 carry yourself. You just don't want to be
22 disrespectful to them. But it's a kill-on-sight.

23 Q. When you say "Kill-on-sight," what do you
24 mean?

25 A. You assault them until someone is pulling

1 you off him. You try to kill him, or he's going to
2 try to kill you.

3 Q. Going back to 2011, you said you were at
4 the South facility?

5 A. Yes.

6 Q. Were there SNM members with you there?

7 A. I lived in a validated SNM or suspected
8 pod, yes. The whole pod was SNM.

9 Q. Okay. And were there any leaders at the
10 time living with you?

11 A. Baby Robert. Robert Martinez.

12 Q. And you mentioned him earlier as being on
13 the tabla?

14 A. Yes, ma'am.

15 Q. What was your relationship with Baby Rob?

16 A. I was close to him. I was real close to
17 him.

18 Q. Did something happen in 2011 in reference
19 to -- with Robert Martinez and you?

20 A. Yeah, he and I plotted to kill Alex
21 Sosoya, Chulo, another SNM member.

22 Q. And you said Alex Sosoya. What's his
23 nickname?

24 A. Chulo, C-H-U-L-O.

25 Q. And was Sosoya an inmate at the South at

1 the time?

2 A. He was.

3 Q. And what was going on that caused you and
4 Robert Martinez to want to kill Sosoya?

5 A. I believe the incident occurred before I
6 was in the SNM. He was speaking badly of the tabla,
7 telling them they were drug addicts and
8 self-serving; they were just using you for their own
9 reasons. And he was trying to -- you know, he had a
10 little bit of a following within the younger
11 generation. He was trying to get people to plot on
12 Arturo Garcia, Juan Mendez, and Robert Martinez.
13 The only one he didn't want killed out of the tabla
14 was Styx at that time.

15 Q. So he was seen as a little bit of a rebel?

16 A. He was a little bit against the grain,
17 yeah.

18 Q. Now, can you describe physically Robert
19 Martinez for the jury as far as his stature?

20 A. He's a little guy. They call him Baby
21 Rob. He's a little guy. He's not very big. I
22 think Chulo was 6'2". Robert is maybe 5'8",
23 something like that. He's older. He's in his 50s.

24 Q. And Robert Martinez. You indicated he was
25 older --

1 A. Right.

2 Q. -- than Chulo?

3 A. Yes.

4 Q. And how big, again, was Chulo?

5 A. About 6'2", 6'3", about 208, 210 pounds.

6 Q. So when you got there, you were made aware
7 of this issue going on?

8 A. I was aware prior to that. I had told
9 Baby Robert in the Level 6 solitary yard that if --
10 I had his back; that I believed that no one should
11 be speaking badly about the tabla. And you know, if
12 you let people speak badly about the tabla, someday
13 you're going to get up there and they're going to
14 speak badly about you. And guys got to show an
15 example that you can't do that. And if I was ever
16 with him and Chulo, I had his back. I would help
17 him. And it fell in our lap like that.

18 Q. And did it eventually come to that?

19 A. Yes, ma'am.

20 Q. What happened?

21 A. He showed up.

22 Q. Who is "he"?

23 A. Alex Sosoya showed up. I noticed the
24 whole pod got quiet. They were kind of -- they
25 didn't think he was going to show up.

1 Q. What do you mean "show up"?

2 A. He came from Level 6 down to Level 5, to
3 tier time. He showed up on our tier. So they
4 housed him with us. Right away they put him as Baby
5 Robert's neighbor. I was still in orientation when
6 he showed up. So that's a seven-day orientation.
7 You don't get to come out until seven days.

8 Q. Okay. So you indicated that he was moved
9 from the North to the South?

10 A. Yes, ma'am.

11 Q. And you indicated orientation. What does
12 that entail?

13 A. Seven days. You go to classification on
14 the seventh day. They let you know if you can come
15 out or not.

16 Q. Okay. And where, when you're in
17 orientation, are you housed?

18 A. In your cell, on the top tier or the
19 bottom tier, whatever tier you're on. It's the same
20 Level 6. It's just that you're preparing to come
21 out.

22 Q. And so you're kind of being held there,
23 kind of quarantined, until it's allowed for you to
24 come out?

25 A. Right.

1 Q. And is that standard?

2 A. That's standard.

3 Q. So what's going on while Mr. Sosoya is in
4 orientation?

5 A. Well, he's neighbors to Baby Rob, and
6 they've been talking about possibly putting an end
7 to a beef they had. And he's -- a lot of people are
8 trying to talk me out of not helping Baby Robert.
9 People are coming to me and telling me, other SNM
10 members, not to help him, and fuck him, and a bunch
11 of just hatred. And I already told him, "I told
12 Baby Rob I'm going to have his back."

13 So Baby Robert and I started going to yard
14 and plotting together on where to get the weapons
15 from and where we're going to do it, where we were
16 going to assault him.

17 Q. Now, why did you decide to have Baby Rob's
18 back?

19 A. I'm a loyal person, and he was on the
20 tabla. And that's what you're supposed to do in the
21 SNM. You're supposed to have the people on the
22 tabla's back.

23 Q. It was important to you?

24 A. Of course it was important to me.

25 Q. And Sosoya. Was he on the tabla?

1 A. No.

2 Q. Now, did you -- at a certain point in
3 time, did the opportunity arise to where you
4 actually were able to carry out this plan?

5 A. Yes, ma'am.

6 Q. Okay. What happened?

7 A. He came out for, like, five days. And
8 Baby Rob and Chulo spoke, shook hands, and we let
9 him get a little comfortable. They we took our
10 weapons to the yard. We bypassed the strip search
11 and took our weapons to the yard and played some
12 basketball.

13 Q. Where did you get the weapons from?

14 A. I got a hot pot, I cut down the bottom of
15 the hot pot with some spun string, some nylon
16 string, and then I made a candle and melted them
17 down. And Baby Robert got his razor blade out of
18 the shaver.

19 Q. And then you mentioned that you were
20 outside now on the basketball court?

21 A. Yes, on the basketball court.

22 Q. Are there other SNM members there?

23 A. Yeah. There's volunteers in one yard
24 right next to us, and then we're in the other one.
25 There was about 11 SNM members in the yard that day.

1 Q. And what happened?

2 A. We waited. The whole gang unit was
3 watching us for a while. We waited till they left,
4 and then we proceeded to assault him.

5 Q. Okay. And when you say "we proceeded to
6 assault him," what exactly happened?

7 A. He got into an argument with another SNM
8 member in the other yard and he walked away.

9 Q. Who is "he"?

10 A. Chulo, Alex Sosoya. He called one of my
11 good friends a "bitch," and I was supposed to
12 wait -- we were supposed to wait to tire him down a
13 little bit. And I just took flight on him right
14 there. I pulled out my weapon from my knee brace
15 and went to stab him in the neck. When I stabbed
16 him, at that time, I was still learning how to
17 sharpen the plastic ones real good. So when it went
18 in, it went up, and I thought it broke. Baby Robert
19 came in, we decided we'd push him up against the
20 fence, and started assaulting him. He tried to run.
21 I grabbed him by the waist. I picked him and dumped
22 him on his head, and Baby Robert sliced him in his
23 neck.

24 Q. And then what happened?

25 A. We went from this corner to another

1 corner, where I got him, pulled his arms back. I
2 was trying to get Baby Rob to get on top of him to
3 slice his neck again. They shot him. He was there,
4 he was gone. So --

5 Q. What do you mean, "they shot him"?

6 A. The COs were shooting into the yard with
7 tear gas and rubber bullets and all that. So he got
8 hit with a canister in the head.

9 Q. Who is "he"?

10 A. Baby Robert.

11 Q. Okay.

12 A. So with everything going around, I got my
13 hands, and I put them in his eyeballs and tried to
14 pull his eyes out. And when I had -- my hands
15 slipped on all the blood, it went to his mouth, he
16 bit my finger. So I proceeded to bite the top of
17 his ear off.

18 Q. And did you actually bite part of his ear
19 off?

20 A. Yes, ma'am.

21 Q. What happened at that point?

22 A. They were telling me to let him go, let
23 him go. I got up. I was sprayed in the face with
24 tear gas. I looked to see where he was at, and I
25 kicked him in the face. And then I went to kick him

1 again. He was gone.

2 I went up against the cage. The COs were
3 yelling at me. I went up to the cage, I got on the
4 floor. They came in, put the shotgun in the back of
5 my head, and told me not to move and handcuffed me
6 and took me out.

7 Q. Okay. You mentioned that, I guess,
8 correctional officials were trying to stop this
9 fight?

10 A. Yes.

11 Q. Is that a fair assessment?

12 A. Fair assessment.

13 Q. What do you recall as far as efforts to
14 try and stop this incident?

15 A. They were throwing concussion grenades.

16 Q. What are those, as far as what you know?

17 A. They're these grenades that have rubber
18 bullets in them. And when they go off, they're so
19 loud, they're supposed to make you stop. And they
20 dispersed some rubber bullets all over the place.
21 They were discharging all the shotguns they have.
22 They threw, I think, three or four tear gas, and
23 used the terminator gun with the big canisters. And
24 it spins and it shoots canisters. And I believe
25 they called for lethal rounds, as well.

1 Q. Okay. So you mentioned all these other
2 things that they were using?

3 A. Right.

4 Q. And you mentioned some shotguns or --

5 A. Shotguns, yes.

6 Q. Okay. The shotguns that they had at that
7 time -- were they nonlethal force?

8 A. They were nonlethal force.

9 Q. And are you aware, from your time in
10 Corrections, whether or not, in stopping fights,
11 Corrections has to do something first before you
12 mentioned lethal force?

13 A. They have to do everything -- they have to
14 use everything they have to stop it. And if they
15 see that there is a real danger on the life, then
16 they go -- and the inmates aren't stopping, they go
17 for lethal rounds.

18 Q. All right. So are they allowed to use
19 lethal rounds just from the get-go?

20 A. No, not that I'm aware of.

21 Q. So what finally happened that you stopped?

22 A. I couldn't see no more. I was gassed out,
23 and I was tired, and I was sprayed in the face with
24 OC spray, tear gas spray.

25 Q. Now, are you aware -- were you taken

1 anywhere after that incident?

2 A. To Level 6 PNM North facility.

3 Q. Let me stop. I meant that day. Did they
4 go --

5 A. I went to Level 6 that day.

6 Q. Okay. That day. Were you examined or
7 taken to the infirmary or anything?

8 A. Yes, I seen medical. They cleared me.

9 Q. Why did you need to see medical?

10 A. For the tear gas.

11 Q. Do you know whether Mr. Sosoya -- what
12 happened with him?

13 A. Yes, he went to the hospital.

14 Q. And was he actually hospitalized?

15 A. Yes, ma'am.

16 Q. Do you know how long he was hospitalized
17 for?

18 A. I think up to a week. Five days to a
19 week.

20 Q. And then what about Robert Martinez? What
21 happened with him?

22 A. I think he was hospitalized, as well, from
23 the grenade hitting him in the head. I think he had
24 brain swelling. They were going to have to cut a
25 piece of his skull out because his brain was

1 swelling, but they didn't have to.

2 Q. So he was taken to the hospital, as far as
3 you believe?

4 A. Yes, ma'am.

5 Q. Now, you indicated that you bit Mr.
6 Sosoya's ear?

7 A. Yes, ma'am.

8 Q. Had you ever bitten anybody's ear before?

9 A. Yes.

10 Q. When was that?

11 A. In 2008, in the case when I stabbed Robert
12 Esparza. I bit the top of his right ear off.

13 Q. All right. And was that during -- was
14 there a struggle with Mr. Esparza?

15 A. Yeah. I went to go to the door to pull
16 him back by his handcuffs, and he held onto a
17 railing that goes to the top tier. I couldn't --
18 they were reloading the shotgun. I couldn't get him
19 to let go, so I proceeded to bite the top of his ear
20 off.

21 Q. Now, you mentioned you were sent back to
22 Level 6 from Level 5?

23 A. Yes.

24 Q. And did you stay there that day and
25 continuing on for some time in Level 6?

1 A. Yes, I stayed there till the end of 2013.

2 Q. And where did you go in 2013?

3 A. I think it was the end of 2013. I went
4 back to Level 5, South facility.

5 Q. All right. Now, have you ever -- I guess
6 I can see that you have tattoos on your neck.

7 A. Yes, ma'am.

8 Q. Do you have any SNM tattoos?

9 A. I do not.

10 Q. And why is that?

11 A. I wanted to get them at one point in time,
12 when I was in the Level 4 recently, about -- right
13 before the Molina case took place. Daniel Sanchez
14 talked me out of it. And he told me for people like
15 he and I, the onda was in our hearts, so we didn't
16 need it on our bodies.

17 Q. All right. And you're saying a word --

18 A. Onda.

19 Q. Can you spell it for the jury?

20 A. O-N-D-A.

21 Q. What is that?

22 A. It's another word for the SNM. It's like
23 the family.

24 Q. And so you do have, I believe, tattoos
25 from when you were -- from your street gang?

1 A. Yes, ma'am.

2 Q. And I'm going to show -- I think it's
3 already been admitted -- Exhibit 590. What are we
4 looking at in 590?

5 A. That's a six-pointed star. That's a
6 symbol for East Side Folk Gang.

7 Q. That's your street gang?

8 A. Yes, ma'am.

9 Q. And then I want to show Exhibit 593. What
10 are we looking at?

11 A. That's ES, for East Side, with a six-point
12 star in between the E and S.

13 Q. Do you have a tattoo on the back of your
14 head?

15 A. Yes, ma'am.

16 Q. Look at Exhibit 594.

17 A. That's SC, with "Silver City" under it,
18 for my hometown.

19 Q. And I'm circling --

20 A. "Silver City."

21 Q. -- "Silver City." All right.

22 Now, I believe 2011, where were you at?

23 A. 2011?

24 Q. Yes.

25 A. I was in the PNM North facility. After

1 the incident with Sosoya?

2 Q. Yes.

3 A. PNM North facility.

4 Q. And did you, while there -- let me ask
5 you, where was Anthony Baca at that time?

6 A. In 2011?

7 Q. Yes.

8 A. I think he was in Southern New Mexico, in
9 Las Cruces. Oh, no. You know what? He was in X
10 pod, in North 3-B.

11 Q. Okay. And you say North 3-B. What does
12 that refer to?

13 A. The North 3-B is a unit within the Level 6
14 PNM North facility.

15 Q. And you were at the same facility?

16 A. Yes, ma'am. We were in the same pod. We
17 were in X pod.

18 Q. And did you have contact with him?

19 A. That was the first time I really got to
20 know Pup. I knew him just from other interactions,
21 but this is the first time I lived with him and had
22 conversations with him. I also lived with Carlos
23 Herrera at that time.

24 Q. Okay. Do you see Carlos Herrera in the
25 courtroom today?

1 A. Yes, ma'am.

2 MS. BHALLA: We'll stipulate, Your Honor.

3 THE COURT: Does that work for you, Ms.

4 Armijo?

5 MS. ARMIJO: Yes, Your Honor.

6 BY MS. ARMIJO:

7 Q. Okay. Carlos Herrera -- is he an SNM Gang
8 member?

9 A. Yes, ma'am.

10 Q. Now, you indicated that at that time that
11 you were housed with Mr. Baca?

12 A. Yes, ma'am.

13 Q. And did Mr. Baca ever discuss with you SNM
14 as far as --

15 A. Yes.

16 Q. -- a philosophy about it?

17 A. Yes, ma'am.

18 Q. Did he ever show you anything as far as a
19 structure of the SNM?

20 A. Yes, ma'am.

21 MS. ARMIJO: And Your Honor, may I
22 approach the witness?

23 THE COURT: You may.

24 MS. JACKS: Your Honor, I'm assuming this
25 is limited to Mr. Baca?

1 THE COURT: I'm not sure what it is,
2 but --

3 MS. ARMIJO: For the record, Bates 11316.
4 It's Government's Exhibit 223-A. And it is as to
5 Mr. Baca.

6 THE COURT: All right. Any objection to
7 223-A coming into evidence?

8 MR. LOWRY: No, Your Honor.

9 THE COURT: All right. Not hearing any
10 objection, Government's Exhibit 223-A will be
11 admitted into evidence.

12 (Government Exhibit 223-A admitted.)

13 MS. ARMIJO: Actually, may we approach,
14 Your Honor?

15 THE COURT: You may.

16 (The following proceedings were held at
17 the bench.)

18 MR. CASTELLANO: Your Honor, the exhibit
19 is a diagram of potential structure of the SNM Gang.
20 I don't think this is limited only to Mr. Baca. It
21 would be enterprise evidence. And I guess talking
22 about the entire structure of the gang, I think that
23 would relate to all members of the gang, not just to
24 Mr. Baca.

25 MS. JACKS: That would be hearsay.

1 THE COURT: Hold on. Let Mr. Castellano
2 finish. Do you have anything else?

3 MR. CASTELLANO: In terms of whether it
4 could be used for purposes of a co-conspirator
5 statement, we do have overall racketeering. So
6 clearly this would be something that all members buy
7 into. So I do think it's enterprise gang evidence,
8 and not just limited to Mr. Baca, especially if he's
9 sharing it with another SNM Gang member.

10 THE COURT: Is this something that Mr.
11 Baca prepared? It's a little hard to read.

12 MR. CASTELLANO: Mr. Rodriguez prepared
13 it.

14 MS. ARMIJO: No, no.

15 MR. CASTELLANO: This was the one that was
16 in Pup's property?

17 MS. ARMIJO: Yes.

18 MR. CASTELLANO: This is Mr. Baca's.

19 THE COURT: This is something Mr. Baca
20 prepared?

21 MR. CASTELLANO: Yes. Mr. Baca has other
22 things like diagrams and things of that nature
23 laying out how he wanted to structure the
24 enterprise.

25 THE COURT: Okay.

1 MR. LOWRY: Your Honor, may I be heard on
2 this?

3 MS. JACKS: Our objection is hearsay as to
4 Mr. Sanchez or anybody but Mr. Baca. And to the
5 extent that it's being offered as a co-conspirator
6 statement, this is the first time we're hearing
7 about it. This was not addressed at the James
8 hearing.

9 MR. LOWRY: And Your Honor, I would also
10 add to that. This is -- we talked about this in
11 opening. There is no evidence in the record that
12 this plan has ever been adopted by anybody. And in
13 fact, this is one of the political reasons Mr. Baca
14 was driven out of Southern and kited out of the
15 Level 6, because there was a disagreement.

16 THE COURT: That's the reason you object
17 to it coming in?

18 MR. LOWRY: Well, it is his handwriting.
19 I'm not going to dispute that. But absolutely, Your
20 Honor, I agree with Ms. Jacks, I don't think this is
21 evidence of co-conspirator statements because there
22 is no evidence that this was ever adopted by anyone
23 other than Mr. Baca.

24 THE COURT: I don't think it can come in
25 as a co-conspirator statement. So I think that it's

1 just going to be hearsay, so limit it to just Mr.
2 Baca.

3 MR. CASTELLANO: I think it's also useful
4 for its legal effect for nonhearsay purpose. I
5 think there are a number of reasons why this
6 document is relevant as to the entire organization,
7 especially coming from a leader. So if a leader is
8 putting out orders and structure and things of that
9 nature of the entire organization, that is an
10 organizational act.

11 THE COURT: Well, I'm not seeing it for
12 the purpose right at the moment, so I'm going to
13 give the limiting instruction and you can use it
14 just as to Mr. Baca.

15 MR. VILLA: Judge, before we go, your
16 Honor, this isn't related to this document, but I
17 believe Javier Molina's mother is in the back right
18 of the courtroom. She's had her hands over her face
19 most of the morning. Her head is down now, and she
20 appears to be getting emotional. She has been
21 sitting with Mr. Molina's wife in court at other
22 times during the trial. Not right now --
23 Mr. Molina's wife --Mr. Molina in earlier points in
24 time. I know we're going to get into Mr. Molina's
25 testimony. And maybe the Government can caution her

1 about her reactions and behavior in front of the
2 jury.

3 The other issue, I believe Mr. Urquizo's
4 attorney is in the courtroom, Ms. Camunez. And he
5 was reserved by Ms. Jacks. I don't know -- my
6 position is she should be excluded. I know the
7 Court's position; she should be cautioned. But I
8 would ask that she be excluded.

9 THE COURT: Is Urquizo's attorney still in
10 the courtroom? Does anybody know?

11 MS. ARMIJO: I don't know. Along those
12 lines, when I went -- I would just --

13 THE COURT: Let's do this: Why don't we
14 go ahead and take a break and let the jury go, and
15 come back and address some of these issues?

16 (The following proceedings were held in
17 open court.)

18 THE COURT: All right. Let's go ahead and
19 take our morning break. This is getting a little
20 long up here. So we'll take our morning break, and
21 it may be a little bit longer because I may give
22 Ms. Bean her break right now and finish up with the
23 attorneys at the end of our break. So it may be a
24 little longer. All rise.

25 (The jury left the courtroom.)

1 THE COURT: All right. Let's take our
2 break, and then we'll come back and finish up with
3 some of these items. Can I get a copy of that
4 letter, 223?

5 MR. CASTELLANO: I'm getting it right now,
6 Your Honor.

7 (The Court stood in recess.)

8 THE COURT: All right. We'll go on the
9 record. I looked at this Exhibit 223 during the
10 break. It looks so general that I'm not sure it's
11 as inculpatory. I gave some thought to it being a
12 statement against interests, and then we come into a
13 hearsay exception which would then apply to
14 everybody. But I don't think it's really that. So
15 I am going to give the limiting instruction on 223
16 because I think it's limited to Mr. Baca. And I
17 don't see another hearsay exception that's going to
18 pick it up. It's not a co-conspirator. So I will
19 give a limiting instruction on that.

20 Let me do a couple of things before you
21 argue.

22 Is Mr. Urquizo's attorney in the
23 courtroom?

24 MR. BECK: She is, yes, Your Honor.

25 THE COURT: What are you doing in the

1 courtroom today?

2 MS. CAMUNEZ: Observing testimony.

3 THE COURT: Well, for what purpose?

4 MS. CAMUNEZ: Well, ultimately, I think on
5 behalf of my client for purposes of sentencing.

6 THE COURT: Well, I think I'm going to
7 invoke the rule against you and go ahead and exclude
8 you from the courtroom. Okay?

9 MS. CAMUNEZ: Okay.

10 THE COURT: All right. So you'll need to
11 leave.

12 Let's see. Here's what I was going to
13 suggest on Ms. Molina, is I was going to ask one of
14 the Court Security Officers and maybe the
15 Government, to step over to her and tell her that
16 she needs to have better composure in the courtroom,
17 and she needs to sit up. She can't lean on the
18 podium -- or the seats. And so she'll just need to
19 have better composure. If she can't maintain it,
20 she'll need to step out. But I don't want her to
21 distract the jury.

22 MR. O'CONNELL: Your Honor, my name is
23 Jerome O'Connell. We represent the plaintiff
24 family, with Jess Lilley. And if you want me to
25 convey that to her, I would be happy to do that.

1 THE COURT: You're an attorney?

2 MR. O'CONNELL: Yes, Your Honor. I'm
3 sorry I'm not in my Superman clothes.

4 THE COURT: Is that all right, if he does
5 it?

6 MR. BECK: I think that may work well,
7 Your Honor.

8 THE COURT: All right. Does that work for
9 the defendants?

10 Okay. So if you'll just talk to her and
11 just tell her that she needs to sit up, doesn't need
12 to be leaning on the podium -- or the seats back
13 there. She needs to stay up so she doesn't distract
14 the jury.

15 MR. O'CONNELL: Absolutely, Your Honor.
16 I'll be happy to have that conversation with her as
17 soon as she comes back.

18 THE COURT: Then you had something else,
19 Ms. Armijo?

20 MS. ARMIJO: Your Honor, I did. I know it
21 was Mr. Villa that has complained about people in
22 the back of the courtroom. But I want to ask the
23 Court to please have that apply to attorneys as
24 well. Mr. Villa said very loudly in front of the
25 jury when I was showing him the exhibit, "Be careful

1 up there," of course, referring to Mr. Rodriguez.
2 And it was said loud enough that I heard him. He
3 was facing the jury.

4 I will also note that throughout this
5 trial Mr. Villa and Ms. Fox-Young are constantly
6 talking to each other and laughing while witnesses
7 are testifying, and commenting on the evidence to
8 each other, shaking their heads. And I let it go
9 because, I think, unlike the other attorneys, who
10 are very stoic and professional, I think that plays
11 with the jury. Maybe the jury is noticing that, as
12 well.

13 But I think this crosses the line, because
14 he's complaining about people in the back of the
15 courtroom, and he himself is making comments in
16 front of the jury about our witnesses.

17 THE COURT: Well, certainly, don't do
18 that. I mean, I can't comment -- it's not on the
19 record and I didn't see it. But don't comment on
20 the evidence in a loud enough voice so that the jury
21 can hear it.

22 All right.

23 MR. VILLA: I haven't, Your Honor. But I
24 understand.

25 THE COURT: Make sure we don't have extra

1 stuff going to the jury, because we're going to be
2 telling them to exclude everything they didn't see
3 in the courtroom. But we don't need to be adding
4 stuff that doesn't show up on the record.

5 Let me get Mr. Lowry here.

6 MR. LOWRY: Your Honor, before we actually
7 admit this exhibit, we'd like to voir dire the
8 witness just to see if he's familiar with Mr.
9 Baca's -- with the exhibit at all.

10 THE COURT: All right.

11 MR. BECK: And your Honor, I don't think
12 our argument was that necessarily this fits into a
13 hearsay exception. It's a nonhearsay -- it's
14 offered for a nonhearsay purpose, which is the
15 establishment of the criminal enterprise. The
16 United States -- the first element that the United
17 States has to prove is that the SNM is an
18 enterprise; included within that is that it has a
19 certain structure. So this document talks about the
20 responsibility of an SNM member --

21 THE COURT: How would that be a nonhearsay
22 purpose? I mean, that's --

23 MR. BECK: Just like --

24 THE COURT: It's for the truth of the
25 matter.

1 MR. BECK: It's just like offering a
2 contract that is hearsay. But when you offer it in
3 a civil case to prove that the contract existed, and
4 it was signed, it's offered for a nonhearsay
5 purpose. Your Honor has written on this before
6 several times, offering a document for a nonhearsay
7 purpose when it goes to a legal element that's
8 required to establish the case. And in this case
9 we're required to establish that an enterprise
10 existed. Within that is that it had a structure.
11 There is an requirement for an enterprise under the
12 RICO statute. And it's not just -- it's not just
13 that there was an SNM Gang. It's that it had a
14 certain structure in place.

15 So this, talking about what the
16 responsibilities of a member are -- become familiar
17 with the counties, to become familiar with the
18 street gangs -- goes to that structure. So it is
19 offered for a nonhearsay purpose. And so maybe a
20 limiting instruction may be that it goes towards
21 establishment of the enterprise. That may be a
22 proper instruction, and in that case it goes against
23 all the defendants. So it may warrant some type of
24 limiting instruction, but it should be admitted
25 against all defendants because it is being offered

1 for a proper nonhearsay purpose.

2 THE COURT: Well, I'll think about it.

3 Let me listen a little bit more.

4 MR. BECK: I'll see if I can find
5 something.

6 MR. LOWRY: Your Honor, can I respond to
7 that just briefly?

8 THE COURT: Yeah, I think we've got time.
9 Go ahead.

10 MR. LOWRY: These alleged musings, these
11 writings, there is no -- unlike a written contract
12 that has been signed by everybody involved, there is
13 no indication whatsoever that anybody other than the
14 author of that document adopted its philosophical
15 purpose. So I find it very difficult to attribute
16 one writing to all of the alleged members of this
17 organization. I don't think it really goes to the
18 enterprise element. It's, as the Court pointed out,
19 a substantive leap into the truth of the matter
20 asserted, and there is absolutely no evidence that
21 that writing has been adopted by anyone. So I think
22 that's pushing the contract analogy beyond the
23 breaking point for the purpose of this exhibit.

24 THE COURT: Well, if you had -- I'm not
25 sure what this document is. But if we likened it to

1 bylaws or articles of incorporation of a corporation
2 or an entity, that would probably be a nonhearsay
3 purpose. It would just be these are what they are.

4 MR. LOWRY: That's what I'm saying. There
5 is no evidence that --

6 THE COURT: Well, that's the reason I may
7 need to listen and see what this document is a
8 little bit to see what it is.

9 Anybody else? We have a few minutes while
10 the jury is lining up.

11 Ms. Armijo.

12 MS. ARMIJO: Yes, Your Honor. And I am
13 going to -- and I told this yesterday to Mr. Baca's
14 defense attorneys, that Mr. Castellano previously
15 went over the bad acts of Mr. Baca, and specifically
16 we're talking about a bad act occurring on June 22,
17 1989? Yes.

18 MR. LOWRY: The Velasquez.

19 MS. ARMIJO: Yes. He murdered an inmate.
20 And previously Mr. Castellano indicated that if we
21 had more evidence of tying this to SNM, that we
22 would do so. And at this time we do, and with this
23 witness have more information that we are making the
24 argument that this bad act should come in.

25 MR. LOWRY: Your Honor, I'm going to

1 object to this. There have been no disclosures
2 whatsoever.

3 THE COURT: Well, approach before you try
4 to bring this up.

5 All right. All rise.

6 MR. LOWRY: Can we voir dire on the
7 handwriting?

8 THE COURT: You may.

9 MR. LOWRY: In front of the jury?

10 THE COURT: Well, is there any reason we
11 shouldn't?

12 MR. LOWRY: All right.

13 THE COURT: All right.

14 (The jury entered the courtroom.)

15 THE COURT: All right. Everyone be
16 seated.

17 All right. Mr. Lowry, you wanted to voir
18 dire the witness on Exhibit 223-A?

19 MR. LOWRY: Yes, I did, Your Honor. Thank
20 you.

21 MS. ARMIJO: He doesn't have it. I think
22 where we left off --

23 THE WITNESS: I know what it is. Sorayo.
24 Yes, I recognize it.

25

1 VOIR DIRE EXAMINATION

2 BY MR. LOWRY:

3 Q. Good morning, Mr. Rodriguez.

4 A. Good morning, sir.

5 Q. How are you doing?

6 A. All right.

7 Q. Has Anthony Baca ever written a letter to
8 you?

9 A. Written a letter to me?

10 Q. Right.

11 A. Not that I could recall. Now, are we
12 speaking of a letter directly to me or --

13 Q. Has he ever written anything to you?

14 A. Yes.

15 Q. So could you recognize his handwriting if
16 it was presented to you?

17 A. Yes, I think he has three different types
18 of handwriting. He has cursive, plain, and kind of
19 like a gangster one.

20 Q. How often have you seen it?

21 A. I've seen the cursive and the plain one.

22 Q. How often?

23 A. Pretty often. Well, he's written to me --
24 I read a lot of his writing while we were living in
25 X pod. And I read a lot of his appeals, his

1 motions, his contracts with administration, and
2 stuff like that.

3 Q. So you would review his legal paperwork in
4 the X pod?

5 A. Yes, because he's real smart with the law.
6 If we need help, he'll show us how to file appeals.
7 And we all write habeases and legal documents, our
8 disciplinary appeals, and we learn off each other,
9 and he's one of the smarter ones with the policy.

10 Q. Okay. So one time?

11 A. Maybe. I couldn't give you a number, but
12 I've seen his writing a lot. You can give me ten
13 different types of handwritings and I'll know
14 exactly which one is his.

15 Q. I'm asking how many times have you seen
16 his handwriting?

17 A. You want a specific number?

18 Q. Yes.

19 A. I can't give you that, but I can give you
20 about maybe 30 or 40. I've seen his handwriting a
21 lot.

22 MR. LOWRY: I have no further questions,
23 Your Honor.

24 THE COURT: Thank you, Mr. Lowry.

25 Ms. Armijo, if you wish to continue your

1 direct examination.

2 MS. ARMIJO: Yes. Thank you, Your Honor.

3 CONTINUED DIRECT EXAMINATION

4 BY MS. ARMIJO:

5 Q. All right. Mr. Rodriguez, I believe you
6 were -- before the break --

7 MS. ARMIJO: I'm going to move in at this
8 time Exhibit 223-A into evidence.

9 THE COURT: And I'm going to admit 223-A.
10 But ladies and gentlemen, it can only be used in
11 your consideration against -- for the charges
12 against Mr. Baca. It can't be used in any way as to
13 the other three defendants.

14 All right, Ms. Armijo.

15 (Government Exhibit 223-A admitted.)

16 MS. JACKS: And Your Honor, we'd request a
17 similar limiting instruction regarding testimony
18 about that document.

19 THE COURT: That's true. That's true.
20 You get the same instruction about what
21 Mr. Rodriguez is going to say about this document
22 and what Mr. Baca was saying in the document.

23 All right, Ms. Armijo.

24 BY MS. ARMIJO:

25 Q. Mr. Rodriguez, what are we looking at?

1 A. You're look at the top four rays, which is
2 called rayos of the Zia symbol, and a structural
3 format for the northern region based on the counties
4 of the northern state of New Mexico.

5 Q. All right. Now, are you familiar with who
6 wrote this document?

7 A. Yes.

8 Q. Who wrote this document?

9 A. Anthony Baca.

10 Q. Did he go over this document with you, or
11 the contents of this document, back when you were
12 housed with him?

13 A. Not this one in particular.

14 Q. Okay. Did he go over the basis of this
15 document?

16 A. Yes. I've seen the whole structure of it
17 and which county goes in what rayo, what the purpose
18 of it is. I know all the structure of this.

19 Q. Who do you know it from?

20 A. Anthony Baca.

21 Q. Do you recognize this writing to be his
22 writing?

23 A. Yes, ma'am.

24 Q. "His" being Anthony Baca?

25 A. Yes, ma'am.

1 Q. You mentioned the Zia symbol. What
2 significance does the Zia symbol have with the SNM?

3 A. It's the logo. It's the gang sign. It's
4 the sun with the S in the middle. And that's what
5 we all get on us.

6 Q. Now, what significance does -- and I'm
7 looking at Exhibit Number 223-A and it looks like at
8 the top of the page there is a half-circle and some
9 lines coming up.

10 A. Right.

11 Q. What significance is this?

12 A. The significance is to the northern
13 region. This is given -- say I'm from the north --
14 the east region, I would be given an outline just
15 like this, but faced toward the east, with a
16 breakdown, pretty much recruitment requirements, how
17 elections go. This is -- the top lines are the
18 northern rayos. Each rayo has a county in it, and
19 there would be members from each set. And there
20 would be a sergeant on the streets and a lieutenant
21 in the prison, and then there would be a captain
22 that's in all the directions.

23 Q. And what was the purpose of this?

24 A. To have each direction make things less
25 complicated, to -- the northern part of the Zia

1 could only be involved in the northern part of the
2 business. Me, being from the east rayo, could not
3 interfere with the north, the south, or the west.

4 Q. And why, again, would you be in the
5 eastern rayo?

6 A. Because my county was Grant County. I'm
7 bottom -- Number 1 rayo on the east side.

8 Q. And so whose structure was this?

9 A. This is Anthony Baca's.

10 Q. And did he discuss these plans with you?

11 A. Yes, ma'am.

12 Q. And were these plans discussed with other
13 SNM members?

14 A. Yes, ma'am.

15 Q. And what was Mr. Baca attempting to do
16 with these plans?

17 A. Build a stronger SNM, build a -- more
18 structured and more disciplined.

19 Q. And does this document set the structure
20 of the whole SNM, or at least the part for the
21 north, the whole SNM enterprise?

22 A. Pretty much for the northern region, yes.

23 Q. And would there have been an eastern
24 region and western region and a south region?

25 A. Yes, ma'am.

1 Q. And all of those would be the whole
2 structure of the SNM enterprise as Mr. Baca had
3 wanted it?

4 A. Yes, ma'am.

5 Q. Now, I'm going to show you Exhibit 753.

6 MS. ARMIJO: May I approach the witness?

7 THE COURT: You may.

8 BY MS. ARMIJO:

9 Q. Showing you Exhibit 753, I'm showing you
10 two documents. Are you familiar with those
11 documents?

12 A. Yes, ma'am.

13 Q. Who authored this?

14 A. I did.

15 Q. And in general, what is it?

16 A. It's the whole breakdown of the Zia based
17 on counties and the structure of SNM.

18 Q. Okay. And what is this based off of?

19 A. Off Anthony Baca's teachings.

20 Q. Did you, in fact, draw this?

21 A. Yes, ma'am.

22 Q. Recently, within the last week?

23 A. Yes, ma'am.

24 MS. ARMIJO: The United States would move
25 for the admission of 753.

1 THE COURT: Any objection?

2 MR. LOWRY: Yes, Your Honor. May we
3 approach on this?

4 THE COURT: You may.

5 (The following proceedings were held at
6 the bench.)

7 MR. LOWRY: I would object under the best
8 evidence rule. This isn't a representation of what
9 they have up on the screen in 223-A. This is
10 markedly different and decidedly more inculpatory,
11 if you will. I mean, he has agents all outside of
12 the rays of this, and he's claiming that these are
13 individuals assigned outside that have specific
14 duties, and none of that is in document 223. If he
15 wants to testify about what his understanding is,
16 that's one thing. But this document is highly
17 prejudicial and doesn't accurately reflect writings
18 that are on the screen.

19 THE COURT: If he were to come in and make
20 this chart up on the butcher block paper, how
21 different would it be?

22 MR. LOWRY: Well, I don't know, because I
23 don't know how this was created. It was just
24 disclosed to us.

25 THE COURT: Well, it's kind of a

1 demonstrative. It's just a chart that he's putting
2 together.

3 Anybody else have any thoughts on it?

4 MS. JACKS: On behalf of Mr. Sanchez and I
5 think other defendants, he's parroting what Mr. Baca
6 allegedly told him. So I would think this is
7 hearsay as to the other defendants and should be --
8 it's based on hearsay, and it should be limited to
9 Baca. I also don't know when this was turned over.
10 We were just debating about this.

11 MS. ARMIJO: It was this weekend.

12 MS. JACKS: Just in the past two days. So
13 it's something lately disclosed to the defendant.

14 THE COURT: Like I said, if he were to
15 stand up here and draw it on butcher block paper,
16 it's not a whole lot different.

17 MS. ARMIJO: And Your Honor, he's going to
18 testify to it. This is to help his testimony. And
19 as you can see, he's handcuffed, so it's kind of
20 difficult for him to be unhandcuffed and have him do
21 it.

22 THE COURT: But is he going to testify he
23 got all this information from Mr. Baca?

24 MS. ARMIJO: Yes.

25 MR. LOWRY: It's not been adopted by

1 anybody other than Mr. Baca.

2 THE COURT: That's the reason I think the
3 limiting instruction is appropriate. So I'll give
4 it as to everybody else. He's going to testify what
5 this is.

6 MS. ARMIJO: Can I ask him specifically if
7 anybody else was around during these discussions and
8 he's aware if he had discussions with any of these
9 defendants about this, just to be clear? I don't
10 know what his abilities are.

11 THE COURT: You need to keep it very
12 straight and very clean, though, because if somebody
13 gave one thing and somebody else -- I think you
14 probably better stick with "This is Baca's story,"
15 and not try to drag other people into it.

16 MR. BECK: Your Honor, I think the
17 testimony that he just gave was that this was the
18 structure of the SNM in New Mexico, not that it was
19 Mr. Baca's structure. It came from Mr. Baca, but it
20 was the structure of the SNM in New Mexico. So
21 we're offering this drawing just like we offered Mr.
22 Baca.

23 THE COURT: Get your stories straight,
24 because y'all aren't being very consistent here.
25 I'll admit it against Mr. Baca, but if it came from

1 Mr. Baca, it came from Mr. Baca, how the chart was
2 put together before I admit it. So you'll need to
3 lay a foundation, because the Government's attorneys
4 don't have their stories straight.

5 MS. ARMIJO: No, Your Honor.

6 THE COURT: Go back and lay a foundation.

7 MS. ARMIJO: It's the other --

8 THE COURT: Ms. Armijo.

9 MS. ARMIJO: It's the other item that I
10 was going to approach on. You told us to approach
11 before the bad act, and I'm approaching now. That
12 will be the next thing I go into.

13 THE COURT: What's this about?

14 MS. ARMIJO: You wanted me to mention it
15 before the jury came in, about the murder.

16 THE COURT: Talk to the witness about this
17 chart or a bad act.

18 MS. ARMIJO: I am. But right after that,
19 I'm going into the bad act.

20 THE COURT: Well, then, approach on the
21 bad act.

22 MS. ARMIJO: Okay. Thank you.

23 (The following proceedings were held in
24 open court.)

25 THE COURT: Ms. Armijo.

1 BY MS. ARMIJO:

2 Q. Mr. Rodriguez, I'll show you Exhibit 753.

3 A. Yes, ma'am.

4 Q. Are you familiar with that item?

5 A. Yes, ma'am.

6 Q. How so?

7 A. I learned it from Anthony Baca.

8 Q. When did you learn it from Anthony Baca?

9 A. 2011, when we were in X pod together. I
10 think I was in X1; he was in X12.

11 Q. And what is it of?

12 A. Structure of SNM.

13 Q. And so did you -- who composed this?

14 A. Anthony Baca.

15 Q. Okay. Who actually -- I'm not talking
16 about the contents of it, but who actually did the
17 physical drawing of it?

18 A. Oh, I did.

19 Q. And what was it based off of?

20 A. Based on my teachings -- my learnings from
21 Anthony Baca.

22 Q. Your learnings from what?

23 A. The SNM structure.

24 Q. Okay. And what does Exhibit 753
25 represent?

1 A. That's what 753 is?

2 Q. Yes, I'm sorry.

3 A. The SNM.

4 Q. The SNM what?

5 A. Structure.

6 Q. Okay. And what does it apply to -- and
7 when did you draw this?

8 A. I think it was on Saturday.

9 Q. Okay. And what -- and you indicated that
10 it's based upon what you found out in 2011?

11 A. Right.

12 Q. Okay. What did it represent back in 2011?

13 A. It was his desire to do -- he came back
14 from Nevada wanting to implement that, wanting to
15 build it up and strengthen the SNM from already what
16 it was.

17 Q. And so did -- is this -- does this
18 document have part of the same structure that we saw
19 previously in the exhibit that we just showed?

20 A. Yes, it has the northern region.

21 Q. And what does this capture?

22 A. What?

23 Q. Document 753.

24 A. What does it capture as a whole?

25 Q. Yes.

1 A. A more structured version of the SNM from
2 what it already was. So there was not no
3 complications of, like -- it's just to simplify it
4 and not have everyone in everyone's business.

5 Q. Okay. Was that a --

6 MS. ARMIJO: All right. The United States
7 would move for the admission of 753.

8 THE COURT: Do you wish to voir dire?

9 MR. LOWRY: Yes, I do, Your Honor.

10 THE COURT: All right, Mr. Lowry.

11 VOIR DIRE EXAMINATION

12 BY MR. LOWRY:

13 Q. Mr. Rodriguez?

14 A. Yes, sir.

15 Q. I believe you just said that at least with
16 document 223-A --

17 A. Which one is that one?

18 Q. The first one.

19 A. Okay.

20 Q. -- that that was Mr. Baca's desire; you
21 used the word "desire."

22 A. Exactly.

23 Q. And then you said that's something he
24 wanted to implement?

25 A. Right.

1 Q. That never really happened, did it?

2 A. It begun -- the northern region was the
3 most -- that region that you showed on the first one
4 was the one most structured at the time. The rest
5 were in process of being implemented.

6 Q. Who implemented it?

7 A. Pup.

8 Q. Okay.

9 A. Anthony Baca.

10 Q. What do you mean? How did it get
11 implemented?

12 A. Okay. You have to go -- well, first, you
13 have to have those individuals buy in. I fully
14 bought into the structure. And the northern region
15 fully bought in. Espanola is a hub for SNM. That's
16 why it was so structured. You have to vote in the
17 person who was going to lead that. And when he was
18 in Southern Correctional Facility, right here in Las
19 Cruces, he was around the majority of the Espanola
20 guys, and they began with the upstart of it on the
21 northern region. They had the most structure, and
22 began getting us who are on the other sides buying
23 in. So me buying in, I'm on the side with Valencia
24 County, Bernalillo, and my county is a smaller
25 county. We have a lot of SNMers from that area. So

1 we have to get together as that region, and we have
2 to vote the person in there that we're willing to
3 follow. Because he didn't want it to be a version
4 of: I'm going to choose this person and you guys
5 have to follow him. That's going to cause problems.
6 He wanted us as individuals to say "Who do you
7 respect?"

8 So okay. There is a consensus, five of
9 you respect this guy; one says he's willing to
10 follow, he doesn't really like him; but the majority
11 wins, and he's the leader. So we're willing to
12 follow that person.

13 MR. LOWRY: Can we pull up 223-A?

14 THE COURT: I'm sorry, Mr. Lowry?

15 MR. LOWRY: Can we pull up 223-A?

16 BY MR. LOWRY:

17 Q. So you don't think this was wishful
18 thinking?

19 A. No, not at all.

20 Q. Okay. So who was responsible for San
21 Juan, McKinley County, and Sandoval?

22 A. The people responsible for this whole
23 rayo, there wasn't that many people from San Juan,
24 McKinley, and Sandoval.

25 Q. My question is who?

1 A. I don't know. I don't know. That
2 wouldn't be my direction to find out.

3 Q. Who was responsible for Rio Arriba?

4 A. I do not know.

5 Q. Who was responsible for Taos?

6 A. What is Espanola County?

7 Q. Espanola County? There is no Espanola
8 County.

9 A. It's in the northern region. I think it's
10 San Miguel. Okay. Go ahead.

11 Q. Okay. So you don't know who was
12 responsible for San Juan?

13 A. No.

14 Q. You don't know who was responsible for
15 McKinley?

16 A. No.

17 Q. You don't know who was responsible for
18 Sandoval?

19 A. No, not Sandoval.

20 Q. And you don't know who is responsible for
21 Rio Arriba?

22 A. No.

23 Q. You don't know who is responsible for Los
24 Alamos?

25 A. You're not talking about the northern --

1 oh, no, I do not. I know who is responsible for
2 Santa Fe.

3 Q. Do you know who is responsible for Taos?

4 A. No.

5 Q. Okay. Who is responsible for Santa Fe?

6 A. Daniel Archuleta, Smurf.

7 Q. Who is responsible for San Miguel?

8 A. No one.

9 Q. Who is responsible for Mora?

10 A. No one.

11 Q. Who is responsible for Colfax?

12 A. No one. The hub for SNM in the northern
13 region is Espanola and Santa Fe. So they would
14 control all four directions, all four rayos.

15 Q. So you said there was one individual
16 responsible for --

17 A. All four of those.

18 Q. And that individual's name was --

19 A. Smurf, Daniel Archuleta.

20 Q. Who voted him in?

21 A. The Espanola guys.

22 Q. Who are they?

23 A. I'm not -- okay, it would be Larry
24 Martinez, Psycho. It would be Swamp, Leroy Romero.
25 Tono Martinez. Mono -- I don't know his real name.

1 I know Daniel Archuleta was there at the time. And
2 one other individual. I don't recall his name.
3 There's pictures in the discovery of them.

4 Q. And that brings me back to a point.
5 That's one of the reasons you know so much about
6 this is because all of this was in discovery on your
7 tablet?

8 A. These are my carnals. I know them.

9 Q. Right, but you had access --

10 A. Yeah, I seen the pictures in the
11 discovery.

12 Q. You have had that for years to study?

13 A. For two years, yeah.

14 Q. And after two years of study, you can't
15 tell us who represented any of these other rayos?

16 A. There is no carnals for me in the rayos.

17 THE COURT: Ms. Armijo, do you have a copy
18 of this document for me, for the Court?

19 I wasn't trying to cut you off, Mr. Lowry.

20 MS. ARMIJO: 223-A or --

21 THE COURT: 753.

22 MS. ARMIJO: I'll give you the original.

23 THE COURT: Is that a copy the Court can
24 use, or is that --

25 MS. ARMIJO: I will get a copy for the

1 Court to use. This is the original.

2 THE COURT: Do you have a copy, then, for
3 the witness?

4 MS. ARMIJO: Yes, we do, so the Court can
5 use this.

6 THE COURT: Let me make a copy. Why don't
7 you make a copy real quick so I don't --

8 MS. ARMIJO: Oh, Your Honor, we do have a
9 copy. I'm sorry.

10 THE COURT: Why don't you hand that back
11 to them, then. Was it a two-page -- oh, it's front
12 and back?

13 MS. ARMIJO: Yes.

14 BY MR. LOWRY:

15 Q. Mr. Rodriguez, with regard to Exhibit
16 753 --

17 A. Which one is that one?

18 Q. I believe --

19 A. Oh, yeah. That's the one I drew, yes.

20 Q. When did you draw this?

21 A. On Saturday.

22 Q. And who asked you to draw it?

23 A. Nobody. I drew it myself. I brought it
24 up that I knew the thing, and I think they asked me
25 if I could draw it. I don't remember who.

1 Q. Where were you sitting when you drew it?

2 A. In my cell.

3 Q. And you drew it by yourself?

4 A. Yes, through memory. Some of the rayos on
5 the bottom, on the Dona Ana area, because I didn't
6 have the map of New Mexico, so that's all from
7 memory right there.

8 Q. So you said you had a conversation with
9 the United States about whether you --

10 A. Prior to drawing it, yes.

11 Q. Who did you have that conversation with?

12 A. I think it was the prosecution.

13 Q. Okay. Who? Which one?

14 A. I think it may have been Mr. Castellano or
15 Maria. I just told them I knew the whole -- when I
16 seen that picture of the northern area, I told them
17 I knew the whole layout, and they asked me to do it.

18 Q. But you've seen that picture of the
19 northern area for --

20 A. Since 2011.

21 Q. But I mean, on the tablet you've had it
22 since 2016?

23 A. Yeah, 2016 -- no, 2015; right?

24 Q. 2015?

25 A. Yes.

1 Q. And that conversation never happened until
2 last week?

3 A. Right.

4 Q. Was anybody else in the room when you had
5 that conversation with --

6 A. Probably I think it might have been a
7 couple officers, maybe.

8 Q. And by "officers," you mean correctional
9 officers?

10 A. Correctional officers.

11 Q. Did this conversation happen at the Level
12 6 facility?

13 A. No. I've been in Santa Fe -- I mean, I've
14 been in Cruces.

15 Q. In Las Cruces?

16 A. Yes.

17 Q. At the Southern facility; right?

18 MS. ARMIJO: Your Honor --

19 MR. LOWRY: Pardon me.

20 BY MR. LOWRY:

21 Q. Inside a correctional facility?

22 A. Yes.

23 MR. LOWRY: No further questions, Your
24 Honor.

25 THE COURT: All right. Thank you, Mr.

1 Lowry.

2 Anybody else?

3 MS. JACKS: Your Honor, I think we made
4 our objections at the bench. It was my
5 understanding the Court was going to limit the
6 exhibit.

7 MR. LOWRY: Your Honor, may we approach
8 very quickly?

9 THE COURT: Yeah. Hold on. Let me see if
10 I can read this on the back of the exhibit.

11 All right. Why don't y'all approach?

12 (The following proceedings were held at
13 the bench.)

14 THE COURT: I'm having trouble reading the
15 back of this, but I guess I don't understand how
16 this reflects Baca's plans. If it's a description
17 of where things were at the time, explain to me how
18 these are -- how this document reflects Baca's
19 plans.

20 MS. ARMIJO: This one, as Mr. Rodriguez
21 will testify, this is based on his conversations
22 with Mr. Baca, the structure that Mr. Baca -- when
23 coming back from out of state to get everything
24 organized with the SNM. I think we've already heard
25 from other members as to when he came back, he

1 wanted more regimen and people to exercise more and
2 everything. This is part of his plan.

3 THE COURT: Well, just explain it to me.
4 For example, just pick something here, Valencia,
5 Cibola, how does that reflect Mr. Baca's plan?

6 MS. ARMIJO: Mr. Baca's plan wanted
7 different representation, like this says "sergeant."
8 So he wanted a sergeant from Valencia and Cibola.
9 So the different areas, he was wanting to assign a
10 sergeant to the different areas.

11 And then I believe he said there would be
12 an overlap, four captains, with him in the middle,
13 and then sergeants, representatives from the
14 different areas. So you have the members, and you'd
15 have the sergeants from each of the areas
16 represented, and then you would have the captains.
17 I believe he previously testified to that.

18 THE COURT: Well, if you think this is
19 going to be Baca's plans -- and I believe he said
20 that Baca followed through on some of them -- why
21 isn't this going to be an 803-3 issue of Mr. Baca's
22 then-existing state of mind such as motive, intent
23 or plan? So that it's got a nonhearsay purpose, and
24 I should not give a limiting instruction here.

25 MR. LOWRY: Your Honor, there is no

1 evidence that this was his state of mind. All of
2 these comments on this are not Mr. Baca's. They're
3 Mr. Rodriguez'. And there is no evidence whatsoever
4 that any of this notion were ever carried out, none.
5 This is --

6 THE COURT: I thought he testified just a
7 moment ago that some of them were. I don't know if
8 it's true or not. That's not for me to decide. But
9 his testimony is that these are his plans. And I
10 guess I understand better now the chart. It seems
11 to me it's got an 803-3 purpose, not Mr. Baca's
12 plans or motive. I'm not seeing the basis for a
13 limiting instruction.

14 MR. LOWRY: There is no evidence. If you
15 eliminate the limiting instruction, Your Honor, what
16 you're saying is this comes in as substantive
17 enterprise evidence. But there is, again -- there
18 is no evidence whatsoever. Well, he did testify
19 that he can't name, other than one person, a single
20 person that purportedly bought into this plan.
21 And --

22 THE COURT: That's not necessary for his
23 state of mind. Here's what I'm going to do: I'm
24 going to admit it, but I'm not going to give a
25 limiting instruction.

1 MR. LOWRY: Could we at least limit it to
2 the face page, because none of this -- this is
3 highly prejudicial on page 2. It's talking about --

4 THE COURT: What is on page 2? I am
5 having a hard time reading it.

6 MR. LOWRY: I am, too, Your Honor.

7 THE COURT: Are you going to elicit any
8 testimony on page 2?

9 MS. ARMIJO: Page 2 represents a lot of
10 it.

11 THE COURT: Represents what?

12 MS. ARMIJO: It's an explanation of the
13 map.

14 THE COURT: Represents what?

15 MS. ARMIJO: The map, it talks about --
16 and I think I would be eliciting testimony --
17 elections every four years. He talks about north,
18 south, east, west, captain, and explanation how the
19 captains come together and everything. So yes, I
20 would be. And it also represents with the dot
21 inside --

22 THE COURT: And all of this came from Mr.
23 Baca?

24 MS. ARMIJO: Yes.

25 MS. DUNCAN: Your Honor, if I could be

1 heard on this. These are Mr. Rodriguez' statements.
2 He can testify what Mr. Baca said, but this is
3 essentially a 302 that they're trying to introduce
4 of Mr. Rodriguez.

5 THE COURT: If you want to voir dire some
6 more on it, you can. But right at the moment it's
7 all Mr. Baca's.

8 MS. DUNCAN: That's not my point. I
9 understand what he's saying. What I'm saying is:
10 The notes on the back is a summary of what Mr.
11 Rodriguez is testifying to, so it's essentially the
12 Government trying to bring in a 302 of the
13 statements in the past. So this is similar just to
14 getting up and drawing on the white board. One
15 thing -- they're not just using it for that purpose;
16 they're trying to bring in Mr. Rodriguez' statement,
17 memorialize it, and give it to the jury. That's
18 improper. Even if the Court is inclined to bring in
19 the demonstrative diagram to talk about Mr. Baca's
20 statements or plan, it should not admit page 2.
21 It's a police report, essentially, of a witness
22 statement. He can testify to it, but it shouldn't
23 be memorialized and given to the jury as an exhibit.

24 THE COURT: Well, I'm going to admit it
25 and without a limiting instruction at the present

1 time.

2 MS. BHALLA: Just for the record, I think
3 that we want to note that we object and believe a
4 limiting instruction as to Mr. Herrera especially,
5 because it doesn't appear that he knew who were
6 supposed to be leaders. And the implication is that
7 the other people in the courtroom may have been in
8 leadership positions based on that document. And I
9 think that during the voir dire, what came out is he
10 doesn't know. And I think that it's unfair for that
11 inference to be drawn that our clients are
12 implicated in that, when Mr. Rodriguez doesn't know.

13 THE COURT: I think this is my copy, isn't
14 it? Is this the original?

15 MR. BECK: I think that's probably the
16 original.

17 MS. ARMIJO: That's a copy.

18 MS. JACKS: For the record, Your Honor,
19 Defendant Sanchez also joins in that objection.

20 THE COURT: Well, if in your cross, you
21 know, you can establish what -- something that's
22 different than what I'm seeing, I can give a
23 limiting instruction at that time. Right at the
24 moment, it seems to me that it comes in as Mr.
25 Baca's state of mind. But I'll listen and y'all can

1 re-approach.

2 MS. BHALLA: Okay. Thank you, Your Honor.

3 MS. JACKS: May I be heard? I think if
4 it's going to come in as evidence of Mr. Baca's
5 state of mind, then the jury should be instructed as
6 to that, if it's Mr. Baca's state of mind.

7 THE COURT: We don't normally explain
8 hearsay exceptions to them.

9 MS. JACKS: I mean, if it's coming in to
10 show the state of mind, that is a limited purpose,
11 not substantive.

12 THE COURT: Not on 803-3. It's just an
13 exception. You can re-approach.

14 (The following proceedings were held in
15 open court.)

16 THE COURT: All right. The Court will
17 admit Government's Exhibit 753 into evidence.

18 (Government Exhibit 753 admitted.)

19 MS. ARMIJO: All right. We will be
20 showing Exhibit 753.

21 CONTINUED DIRECT EXAMINATION

22 BY MS. ARMIJO:

23 Q. Mr. Rodriguez, what is it that we're
24 looking at?

25 A. The breakdown of the SNM structure.

1 Q. Okay. And I believe we've already heard
2 testimony that you -- that this is actually your
3 drawing; is that correct?

4 A. Yes, ma'am.

5 Q. Okay. And what did you base it off of,
6 again?

7 A. Off of what I learned from Pup, Anthony
8 Baca.

9 Q. Okay. Can you please -- and I'm going to
10 first ask that the top half be focused in on.

11 (Cellphone interruption.)

12 THE COURT: That's very happy.

13 Q. All right. Mr. Rodriguez, what is it that
14 we're looking at?

15 A. The top northern part of Zia symbol.

16 Q. Okay. And I'm going to point out a couple
17 of different things. You have numbers here 1, 2, 3
18 and 4?

19 A. Right.

20 Q. What do those represent?

21 A. Each rayo, just clockwise, the rayos that
22 these are.

23 Q. Okay. And then you have -- I'm just going
24 to use this one as an example.

25 A. Right.

1 Q. I drew what looks like a footprint on
2 Exhibit 753, the top northern rayo, labeled Number
3 1; is that correct?

4 A. Yes, ma'am.

5 Q. What is the first part up here that says
6 "STG" and there is a dot?

7 A. That would be a sergeant on the streets.

8 Q. Okay. And then what do you have written
9 down below that? What does that represent?

10 A. That's -- the counties? Or in the dot in
11 the rayo?

12 Q. I'm sorry. Underneath where it says
13 "sergeant."

14 A. Those are the counties. And if there was
15 SNMers from that area, they would choose that SNMer
16 to be a sergeant of that area.

17 Q. So this is talking about out on the
18 street?

19 A. Yes. Any dot outside of Zia is the
20 streets.

21 Q. Okay. And there is a sergeant outside on
22 the -- let me clear this up a little bit.

23 Oh, thank you, Ms. Standridge.

24 Okay. And then what does this mean in
25 here? And I'm focusing to the rayo that says Number

1 1, and I circled the top part of it. There is a dot
2 there.

3 A. That would be the individual elected to be
4 the lieutenant inside the prison of that direction.

5 Q. So are the rayos -- so you have number 1,
6 a lieutenant inside?

7 A. Right, of San Juan, McKinley, and
8 Sandoval. If there was carnals from that area, he
9 would be the lieutenant who reported to the captain
10 and to Pup based on that area.

11 Q. Okay. Now, I'm going to kind of draw a
12 line here. You have a dot on the inner circle that
13 says CPT. What does that represent?

14 A. That would be a captain.

15 Q. Okay. And how many captains are there?

16 A. Four.

17 Q. And from what areas?

18 A. Okay --

19 Q. I mean in general, do the four areas --

20 A. There are just four captains, and they
21 report to Pup.

22 Q. Okay. And are each of the captains from
23 the north, south, east, and west?

24 A. Yes.

25 Q. And is that how you have it written on

1 Exhibit Number 753?

2 A. Yes. That captain would be in charge of
3 all three of those rayos in the north.

4 Q. I'm just going to draw here -- I drew on
5 753, the top part of it, that says "captain." So
6 would the captain then be in charge of all this area
7 that I have encircled, which would be the four
8 inside lieutenants and then the sergeants on the
9 streets?

10 A. Right.

11 Q. All right. And then if we can now go
12 towards the middle section. Focus in on it. Okay.
13 Maybe a little bit smaller. I'm sorry. That was
14 too much. Let me just look at it normal again. I'm
15 sorry. There we go. Okay.

16 Now, I'm looking at the middle section and
17 I believe now we can see it encircling the whole
18 thing. Now we can see that there's four captains;
19 is that correct?

20 A. Yes, ma'am.

21 Q. Who do the captains report to?

22 A. Pup.

23 Q. And is that what you have in the middle of
24 the Zia?

25 A. Yes, ma'am.

1 Q. And then going to each side, I believe you
2 indicated that you would have been on the eastern?

3 A. Yes.

4 Q. Okay.

5 A. Yeah, the western.

6 Q. Western, I'm sorry.

7 A. The Grant, Sierra, Catron, on the second
8 rayo right there.

9 Q. So this would have been where you were?

10 A. Yes, ma'am.

11 Q. Okay. And so then you have other areas
12 there that are on the eastern part of the state, as
13 you best recollect?

14 A. Yes.

15 Q. And I believe you have -- and the western
16 part is set up the same way? You have a sergeant
17 out on the street to cover each of them?

18 A. It's all an election process.

19 Q. Election by whom?

20 A. Election by individuals from that
21 direction. So me being from Grant County, we from
22 Grant County and anyone from Catron or Sierra would
23 come together and say, "Who do we want to lead us?"

24 And we would approve that, and then that
25 person would be an LT. He would appoint the

1 sergeant on the streets.

2 Q. Okay. And that was going to be my
3 question. How does the sergeant get appointed?

4 A. That's the LT, because he needs someone
5 that's going to go forth with his -- like his
6 right-hand man.

7 Q. Now, some of these rayos only have, like,
8 one. I see that Bernalillo just has one, and Dona
9 Ana just has one, as opposed to some of the others
10 that have three. Why is that?

11 A. Because they're bigger counties. And
12 there's more SNMers from those areas.

13 Q. Now, I believe when Mr. Lowry was asking
14 you questions, you indicated that the southern part
15 of this was already getting into --

16 A. Northern.

17 Q. I'm sorry?

18 A. The northern.

19 Q. Oh, the northern part. I'm sorry. The
20 northern part was already getting into -- already
21 being put into play?

22 A. I think it was put -- more simply put into
23 place there because there was a smaller pool of
24 SNMers from Espanola. And from all these areas like
25 Bernalillo, Valencia, Grant County, you've got a lot

1 of SNM members. So you have to get -- you have to
2 reach all them guys. He was in Southern with most
3 of the Espanola guys, so he was able to get them on
4 board with it.

5 Q. Okay. Now, then, let's see. Going to the
6 eastern part of the state, is it set up the same
7 way?

8 A. Yes.

9 Q. Okay.

10 A. It's set up so that when Mr. Lowry was
11 asking me about the northern area, the issue with --
12 say if there was a carnal from Rio Arriba, I
13 wouldn't know his position, because that's not my
14 business. The whole thing is that the only people
15 that interfere with all four directions is Pup. I
16 can't be from the western side and interfere with
17 the northern side. That's not my direction. They
18 have to recruit the SNMers, because I didn't grow up
19 in those areas.

20 MR. LOWRY: Your Honor, can we object to
21 this line of questioning? It verges on expert
22 testimony, 701. No factual basis.

23 THE COURT: Well, lay a foundation. If it
24 all came from Mr. Baca, that's one thing. But if
25 it's something else, you probably need to make it

1 clear as to where the information is coming from.

2 BY MS. ARMIJO:

3 Q. Where did this information that you're
4 testifying to come from?

5 A. From Anthony Baca. Like I said, I bought
6 in fully to this. When he started teaching me this
7 stuff and the culture of New Mexico, I bought in
8 fully.

9 Q. Okay. Now, so you would not, as being
10 from the western part of it, have anything to do
11 with the other three sets of rayos?

12 A. No.

13 Q. Would you have anything to do -- I believe
14 that you would be, you said, on the second --

15 A. Right.

16 Q. -- rayo? On the western part of the
17 state. Would you have anything to do, then, with 1,
18 3 or 4 of the western part of the state?

19 A. If I was a captain, yes. But not if I'm
20 just the LT in that direction.

21 Q. Did Mr. Baca indicate anything as far
22 as -- so what do the dots represent? I'm sorry.
23 Let me ask you this.

24 A. Individual SNM members.

25 Q. And is there anything as far as the

1 election part of it?

2 A. The election part of it is that you go for
3 election every four years. So whoever you elect --
4 he says whoever you elect, make sure you're ready to
5 follow them, because you can't go for reelection
6 for -- after the four years. So they're there for
7 four years.

8 Q. Okay. And do you know -- and you may not
9 know -- could they be reelected?

10 A. Yes.

11 Q. And so you'd already indicated nobody gets
12 involved on other people's rays?

13 A. Right.

14 Q. What about -- how, if any, if you know,
15 does politicking or any sort of thing that's going
16 on out on the streets come into play with this?

17 A. This was to pretty much prevent that from
18 happening in other directions. If you got involved
19 in southern politics from the northern area, you
20 were going to get in trouble; you had a violation
21 coming. That's not your direction to be getting
22 into those guys' areas and telling them, "Why do you
23 elect this guy?" They can't do it.

24 Q. Okay. So what was going to happen with
25 this?

1 A. You would have -- what was happening with
2 what?

3 Q. With this structure. What was going to
4 happen?

5 A. It was going to be a more simple and more
6 refined SNM. Say Pup has an issue going on in the
7 northern region, all the SNM members are known from
8 up there. So if there is a hit to take place,
9 they're pretty much who's going to look after it.
10 So he would get someone from the eastern, western,
11 the south to form a hit team to go up north and take
12 out huevos and leave, so you're not known.

13 MR. LOWRY: I object to this line of
14 questioning and the answer. There is no evidence
15 whatsoever that any hits ever took place under this
16 plan or this ever was implemented by anybody, other
17 than imagination.

18 THE COURT: Why don't you try to -- as you
19 were doing earlier, I think he indicated that some
20 things were implemented and others were not.

21 A. I think I said "if" there is any hits that
22 needed to be done.

23 BY MS. ARMIJO:

24 Q. Okay. And so let me just be clear. What
25 you're talking about is a plan that was to be used

1 and implemented if there was something to be done?

2 A. Right. Drug distribution. Say someone
3 from the eastern rayos are doing good on drugs, he
4 would connect two individuals on the east and the
5 west, and they would work together to pretty much
6 lock down the whole state.

7 THE COURT: Just have the witness, in the
8 testimony, make it clear what is a plan, and then if
9 it actually came about, then we may need to separate
10 it out so that people can make objections to that.

11 Q. And again, just to be clear, was this the
12 plan?

13 A. This was the plan.

14 Q. And you indicated that you bought into it.

15 A. Bought in fully.

16 Q. Fully?

17 A. Fully. I was 100 percent in. I was
18 willing to take a backseat to anyone who was able to
19 lead the ride in the right way and leave my politics
20 out of it. If I didn't like you but you were
21 leading us right, I would take a backseat because I
22 wanted this to work.

23 Q. Okay. And so now also in 2011, during the
24 time that you were talking with Mr. Baca and learned
25 this -- hold on. Let me go on. I believe I wanted

1 to clarify a couple of things. I believe you
2 earlier testified about your 2009 incident --

3 A. 2008.

4 Q. -- 2008 incident regarding how you were
5 burned on the drug activity?

6 A. Robert Esparza?

7 Q. Yes. What sort of drugs were involved?

8 A. Heroin, marijuana, and I think some
9 cocaine.

10 Q. And what was your involvement in that as
11 far as -- were you using drugs or were you selling
12 drugs?

13 A. I was using and selling.

14 Q. And who were you selling to?

15 A. To Robert Esparza and other -- I think he
16 had a homie named Biaso, and just whoever would ask
17 for it, you're looking for it, we had it.

18 Q. Okay. And then the other thing I wanted
19 to clear up, the 2011 incident, you indicated that
20 with Mr. Sosoya, you indicated that you bypassed the
21 strip searches?

22 A. Right.

23 Q. What did you mean by that?

24 A. I hid my weapon so that the officer
25 wouldn't see it. I was -- we would come out of our

1 cell one at a time and go to the strip cage. The
2 strip cage door is open and the officer watches the
3 strip. We proceed to get naked, and I had a knee
4 brace with an ace bandage under it. I got my weapon
5 and strapped it to my leg, to where it was pretty
6 much a part of my body. I put the knee brace over
7 it. And when they asked me to lift up my knee
8 brace, I lifted it up, and that was it, and I go out
9 to the yard.

10 Q. You also indicated, I believe, that you
11 were possibly doing some studying at some time.

12 A. Right.

13 Q. What were you talking about then?

14 A. When I joined the SNM, a day for chow, the
15 COs are passing out chow, I think it was probably a
16 lunch, he slides in a manila envelope about that
17 thick, and it was from Arturo Garcia. I proceeded
18 to read it. It was Stoicism from Seneca, Marcus
19 Aurelius' personal journals, leadership qualities,
20 Art of War by Sun Tzu; Robert Green, anything by
21 Robert Green. Anything and everything to prepare
22 your mind to be a better soldier, a better SNM
23 member.

24 Q. And is this something that you did? You
25 read all those books?

1 A. Read it. I devoured it. It was all
2 handwritten personal excerpts taken out of one book
3 and twisted to turn into a belief of SNM. We'll
4 take an excerpt, we'll take a paragraph, and we'll
5 maybe switch a couple words, and it will be
6 implementing the SNM to train your mind.

7 Q. Now, and I believe you also were talking
8 about -- when Mr. Lowry was asking you questions,
9 that you indicated you were familiar with Mr. Baca's
10 writings. You were talking about -- I believe you
11 indicated something about "we all write appeals and
12 that." Can you explain that to the jury?

13 A. So say I get a disciplinary report. I get
14 locked down. I'll defend myself, then I'll appeal
15 it to the Department of Corrections to try to beat
16 it.

17 If I'm in protective solitary confinement,
18 I'll write an appeal and a formal complaint and it
19 goes to a grievance. Then I turn it into a habeas
20 corpus to go to the streets to get out of Level 6
21 sooner. To the administration, if you have issues
22 going on where you feel you're locked down for the
23 wrong reasons, you file appeals.

24 Q. Okay. And is that something that is
25 expected of you as an SNM Gang member?

1 A. Not expected, but for those of us who want
2 out of Level 6, we try everything to get out, you
3 know. And some of us help each other, you know.
4 The ones that are good at it, we will help write
5 their appeals and try to get each other out, try to
6 get each other to beat the reports.

7 Q. Now, I believe you already mentioned that
8 you knew Daniel Sanchez; is that correct?

9 A. Yes, ma'am.

10 Q. All right. And what year did you meet
11 him?

12 A. I think it was 2007, 2008, around there --
13 no, 2006, 2007.

14 Q. And what was his position with the SNM?

15 A. At that time I know he was going to be a
16 replacement for Arturo Garcia on the tabla. Arturo
17 Garcia on the tabla -- there were rumors they were
18 going to get sent out of state, to Hawaii. So he
19 was Arturo's right-hand man.

20 Q. What did you think of Mr. Sanchez?

21 A. I liked him. I looked up to him. He was
22 someone that encouraged me to speak up when things
23 were going wrong. He was somebody to uplift you and
24 treat you right.

25 Q. Now, did you have conversations with him

1 in reference to an incident that occurred after you
2 had met him, that occurred previously?

3 A. Yes, ma'am.

4 Q. Okay.

5 MS. ARMIJO: And if I just may have a
6 moment?

7 THE COURT: You may.

8 BY MS. ARMIJO:

9 Q. Now, you were housed with him initially
10 where?

11 A. In the North facility.

12 Q. And do you recall approximately how long
13 you were housed with him at the North facility?

14 A. I've lived with him throughout the years
15 in the Level 6 when -- we lived in the same pod
16 together for maybe a year. But we'd see each other
17 in the yard, the Level 6 yard.

18 Q. Then I'm going to fast-forward. You
19 indicated that you moved to Southern in late 2013,
20 approximately?

21 A. Around December.

22 Q. And was he there at that time?

23 A. Yes, ma'am.

24 Q. And where was he in relationship to where
25 you were when you moved to Southern?

1 A. Like where did he live?

2 Q. Was he in the same pod or the same
3 building?

4 A. I showed up to 1-A blue pod. He was in
5 that pod on the top tier.

6 Q. Okay. So in the same pod?

7 A. Yes, ma'am.

8 Q. All right. When you met Mr. Sanchez, did
9 he have -- did you learn about an incident that had
10 happened with him?

11 A. Yes, ma'am.

12 Q. Previous to your meeting him?

13 A. Yes, ma'am.

14 Q. And how did you learn of the incident?

15 A. We spoke about it, he and I.

16 Q. And what did he tell you about it?

17 A. That he had stabbed a Sureno because the
18 Sureno had stabbed one of our carnals in the Hobbs
19 facility.

20 MR. LOWRY: Your Honor, can we get a
21 limiting instruction on this?

22 THE COURT: All right. These are comments
23 that can only be used -- or evidence that can only
24 be used against Mr. Sanchez and cannot be used
25 against the other three defendants.

1 All right. Ms. Armijo.

2 MS. ARMIJO: All right.

3 BY MS. ARMIJO:

4 Q. And you indicated this happened where?

5 A. At the South facility, Level 5.

6 Q. And you indicated that he stabbed what
7 gang member?

8 A. A Sureno.

9 Q. And are the Surenos -- do they get along
10 with the SNM? Are they rivals?

11 A. We try to function and have respect, but
12 we tell them it's all good, and then usually the
13 time we see them, we try to stab them.

14 Q. Okay. And what was the reason for this?
15 Did he tell you what the reason was for the
16 stabbing?

17 A. Yes. The Surenos in Hobbs, in Level 3,
18 stabbed a guy named Spook, who was an SNM member
19 from his hometown, Belen.

20 Q. So what did Mr. Sanchez do?

21 A. Well, what usually happens in prison is
22 coincidence, when an individual like that -- they
23 put him in an SNM pod, they stab an SNMer, they put
24 them right in the midst of the SNM. So the SNM were
25 taking turns with the fierro in the showers. I

1 think three SNMers were trading it off. It just
2 happened to be that Dan was in the shower when the
3 guy, Rhino, was in the shower. He came out of the
4 shower and proceeded stabbing him and the officer.

5 Q. And he stabbed who else?

6 A. I think he stabbed the officer for getting
7 in the way. I think he stabbed him one time in the
8 vest.

9 Q. And did Mr. Sanchez tell you about this
10 incident?

11 A. Yes, ma'am.

12 Q. And in your eyes, would that have been an
13 SNM-related incident?

14 A. Yes, ma'am.

15 Q. Now, I believe you've already identified
16 Mr. Herrera. When you -- when did you meet him
17 again?

18 A. In 2005.

19 Q. And are you aware of whether or not he has
20 a tattoo that's gang-related?

21 A. He has a Zia symbol on his stomach with an
22 S in it for Syndicato.

23 Q. Now, were you aware of whether or not,
24 when you went to Southern in 2013 -- of whether or
25 not he was there?

1 A. Yes, he was there.

2 Q. Where was he being housed?

3 A. He was in yellow pod.

4 Q. Did he have a position in yellow pod?

5 A. Yeah. He was on the tabla. He was one of
6 the key-holders in yellow pod.

7 Q. Okay. Explain what key-holders is.

8 A. It's a voted member of the tabla, pretty
9 much. If Arturo or one of the original tabla
10 members show up, he wouldn't have it. So it's just
11 an elected position.

12 Q. A leadership position?

13 A. A leadership position.

14 Q. Now, what about Rudy Perez? Do you know
15 Rudy Perez?

16 A. Yes, I know who he is.

17 Q. Do you see him in the courtroom today?

18 A. Yes, ma'am.

19 MR. VILLA: Your Honor, we'll stipulate.

20 THE COURT: Does that work for you, Ms.
21 Armijo?

22 MS. ARMIJO: Yes, Your Honor. Thank you.

23 BY MS. ARMIJO:

24 Q. When did you meet him?

25 A. When I showed up in Southern New Mexico

1 Correctional Facility.

2 Q. Do you know if he's a member?

3 A. Yes, ma'am.

4 Q. Is he?

5 A. Yes.

6 Q. And where was he being housed in
7 relationship to where you were housed? Not exactly
8 cells, but was he in the same pod or a different
9 unit?

10 A. He was in the same pod with me.

11 Q. I'm going to go to when you went to
12 Southern, you indicated, in December of 2013.

13 A. Right.

14 Q. When you got there, was Mr. Baca there?

15 A. No.

16 Q. Do you know where he was?

17 A. He was in the North facility.

18 Q. And where were you coming from?

19 A. I was coming from the South facility.

20 Q. How long had you been, approximately, at
21 the South facility?

22 A. For nine to ten months.

23 Q. And then do you know, was that part of the
24 process of, if you know, being Level 6 and then when
25 you were in the South facility, what level were you?

1 A. Level 5.

2 Q. Okay. And when you went down to Southern,
3 the Southern New Mexico Correctional Facility, what
4 level were you there?

5 A. Level 4.

6 Q. So you had worked your way down to Level
7 4?

8 A. Yes, ma'am.

9 Q. Okay. What pod did you go into?

10 A. 1-A blue pod.

11 Q. I'm going to have some pictures displayed
12 that are already in evidence.

13 Can we get Exhibit Number 20 displayed?

14 Are you familiar with that scene?

15 A. Yes.

16 Q. What are we looking at?

17 A. Looking at the view from the front
18 entrance door, the bottom tier stairs, the top tier
19 stairs.

20 Q. And is that where you were housed?

21 A. Yes, ma'am. Right there in 111.

22 Q. Oh, okay.

23 A. There is 110 and 111, yes, ma'am.

24 Q. I'm circling it on the bottom right hand
25 of the screen?

1 A. Yes.

2 Q. All right. And then are you familiar with
3 the setup at Southern as far as the buildings?

4 A. Yes, I am. Just that area, though. I was
5 only there for three months, so just the unit I was
6 in.

7 Q. Now I'm going to show you Exhibit Number
8 162, which is in evidence. And this indicates that
9 it is a Southern New Mexico Correctional Facility
10 unit floor plan. And if you are aware or not, are
11 you aware of whether or not the buildings -- you
12 indicated that you were in a pod; correct?

13 A. Right.

14 Q. Blue pod?

15 A. Yes.

16 Q. Are you aware of whether or not the
17 building, the entire building that you were in, had
18 other pods in it?

19 A. Yes, it did.

20 Q. Okay. How many other pods were in it?

21 A. Two conjoining pods.

22 Q. Okay. And do you know where -- and I'm
23 looking at Exhibit Number 162 -- blue pod was?

24 A. Yes.

25 Q. Where would it have been on this screen?

1 A. It's on the -- it's the bottom corner one.

2 Q. The bottom corner one?

3 A. Yes.

4 Q. Where I've circled?

5 A. That one.

6 Q. That would have been the blue pod?

7 A. That's blue pod.

8 Q. Okay. And what was the pod in the middle,
9 if you know?

10 A. Yellow pod.

11 Q. Okay. And what is the pod to the right,
12 this one on top?

13 A. That's green pod.

14 Q. Okay. Now are those the official names,
15 or are those the names that people use because
16 that's the color that the doors are?

17 A. That's the color the doors are. So the
18 one in the middle would be 1-A A. The one I lived
19 in was 1-A B, and green was, I think, 1-A C.

20 Q. Okay. And does the 1-A refer to the
21 building?

22 A. Yes. It's the whole building as a whole.

23 MS. ARMIJO: I'm going to use a couple of
24 exhibits and I believe the defense does not have an
25 objection. But before I move for their admission,

1 I'm going to actually draw on it. So Your Honor,
2 I'm going to put up two exhibits on the Elmo but I
3 have permission from defense counsel to use it as
4 demonstrative evidence with Mr. Rodriguez.

5 THE COURT: Is that agreeable with all the
6 defendants?

7 MS. JACKS: Yes, Your Honor.

8 THE COURT: Do you want to identify the
9 exhibits, Ms. Armijo?

10 MS. ARMIJO: Yes, Your Honor. Exhibit
11 Number 752 is a New Mexico State Police diagram, not
12 to scale. 752 is the lower level of what would be
13 blue pod.

14 THE COURT: Okay. You gave me 752 twice.
15 Is the second one --

16 MS. ARMIJO: That second one there is 751,
17 as well. So one would be an upper level and one
18 would be a lower-level diagram. I believe 751 is
19 the upper level, and then 752 indicates that it's
20 the lower level.

21 BY MS. ARMIJO:

22 Q. And Mr. Rodriguez, are you familiar with
23 this diagram?

24 A. Yes, ma'am.

25 Q. Have you seen it in the discovery?

1 A. I seen it in my original state case for
2 the Molina murder.

3 Q. Okay. Are you aware, then, that New
4 Mexico State Police drew this diagram?

5 A. No.

6 Q. Okay. But you saw it from there?

7 A. I saw it from there, yes.

8 Q. It says "New Mexico State Police" on top?

9 A. Yes.

10 Q. Do you believe this is a fair and
11 accurate, although not to scale, diagram of the
12 lower level of the pod that you were referring to as
13 the blue pod?

14 A. Yes.

15 Q. Okay. And the same for 751 except that's
16 upper level?

17 A. Yes, ma'am.

18 Q. All right. Now, do you recall who was
19 living with you at the time in blue pod? And I'm
20 going to go specifically to March of 2014, and I
21 guess I'll be more specific. March 6th and 7th of
22 2014. Are you aware what happened that day?

23 A. Yes, ma'am.

24 Q. So can you remember where certain people
25 lived in these units?

1 A. Yes, ma'am.

2 Q. Okay. I'm going to first start -- and if
3 you don't remember, you know, just tell me. Tell me
4 if I am wrong on anything. Okay. Who, if you
5 recall, was living in 109?

6 A. The cell was vacant.

7 Q. Vacant?

8 A. Yes.

9 Q. 110?

10 A. Michael Hernandez.

11 Q. 111?

12 A. Myself, me.

13 Q. That was your pod?

14 A. Yes.

15 Q. 112?

16 A. Jeffrey Madrid.

17 Q. Right next to there is the shower; is that
18 correct?

19 A. Yes, ma'am.

20 Q. And then we're going to go up to -- I
21 believe it says 113?

22 A. That was Jerry Montoya.

23 Q. Room 114 -- cell?

24 A. I think that cell was vacant.

25 Q. Okay. 115?

1 A. Rudy Perez.

2 Q. Okay. And 116?

3 A. Ronald Sanchez.

4 Q. And who is Ronald Sanchez?

5 A. That's Dan Dan's brother, Daniel Sanchez'
6 brother.

7 Q. Is he an SNM Gang member?

8 A. No.

9 Q. Now, is he an associate?

10 A. I guess, yeah, he's an associate.

11 Q. What does an associate mean in your mind?

12 A. Just a friend that lives around us, just
13 someone that's in good standing with the SNM and
14 carries himself right and respectful.

15 Q. I'm showing you Exhibit 751, and this I
16 believe should be the upper level; is that correct?

17 A. Yes, ma'am.

18 Q. 101?

19 A. Jerry Armenta.

20 Q. 102?

21 A. I believe the next three cells were
22 vacant.

23 Q. I'm just going to put Vs for vacant.
24 Okay. 105?

25 A. Javier Molina.

1 Q. 106?

2 A. Jason Wright.

3 Q. Does he spell it with a W?

4 A. Yes, with a W.

5 Q. 107?

6 A. Daniel Sanchez.

7 Q. 108?

8 A. Timothy Martinez.

9 Q. Let's see. This is the upper level. So
10 would it be fair to say if I were to take these two
11 diagrams, 7 -- let me go out a little bit. There we
12 go. If I were to take these two diagrams and put
13 them on top of each other -- in other words, was
14 Timothy Martinez on top of Ronald Sanchez?

15 A. Yes.

16 Q. And was Rudy Perez on top of, cell wise,
17 or below Daniel Sanchez?

18 A. Yes. Daniel Sanchez lived above him.

19 Q. And just for clarification, I'm looking at
20 752, are these -- what are these?

21 A. Those are tables, sitting tables.

22 Q. And then in the picture we have, it says
23 "main entrance." What are these?

24 A. That's upper-level stairs and the lower
25 level, to go to the bottom tier.

1 Q. So then just for purposes of orientation,
2 is what we're looking at -- if I could have
3 displayed -- I'm sorry. I'm going to change it to
4 photograph 117. What is this a picture of?

5 A. That's the picture of the day of the
6 Molina murder.

7 Q. Okay. Now, specifically I'm looking at
8 stairs?

9 A. That's the upper level stairs.

10 Q. Okay. So in the previous exhibit, 752
11 when it said "up" --

12 A. Yes.

13 Q. -- and then there was a main entrance,
14 would we be standing at the main entrance looking
15 into blue pod?

16 A. Yes, ma'am.

17 Q. All right.

18 Did you know Javier Molina?

19 A. Yes, I knew him.

20 Q. Was he an SNM Gang member?

21 A. Yes.

22 Q. Did he have a gang name?

23 A. I used to call him Javi. But they called
24 him Crazy, I think.

25 Q. Now, did you know anything as far as his

1 status when you got to Southern, as far as his
2 status within the gang?

3 A. Yes.

4 Q. What was his status?

5 A. He -- he was a rat.

6 Q. And what do you mean by "rat"?

7 A. That he had given information to the
8 police in a case that was on the streets.

9 Q. And is that allowed?

10 A. No.

11 Q. Prior to your coming down to Southern,
12 were you part of any discussion about that?

13 A. Yes.

14 Q. Where was that discussion held?

15 A. In 2013, before I went to the Level 5
16 South.

17 Q. Okay.

18 A. I was in the 1-A yard with Robert Martinez
19 and David Calbert.

20 Q. Okay. Robert Martinez?

21 A. Baby Rob.

22 Q. Baby Rob, the same individual that you had
23 talked about being on the tabla, and with the Sosoya
24 incident?

25 A. Yes.

1 Q. Okay.

2 A. This is the first time myself and Robert
3 had seen each other since that incident. So -- and
4 Calbert was involved in the Silva incident. This is
5 the first time we've seen each other. There was a
6 lot of politicking going around. And that's when
7 Calbert told me he had paperwork on Jerry Montoya
8 and Javier Molina. That's the first I heard about
9 it.

10 Q. Okay. And were you anticipating going
11 down to South?

12 A. Yes.

13 Q. And did you go down to Southern before
14 anybody else, before the paperwork or after
15 paperwork, if you know?

16 A. Before or after?

17 Q. Yes.

18 A. Say that again.

19 Q. That was a poor question on my part. I
20 apologize. Okay. You indicated that at that
21 meeting you learned that there was paperwork.

22 A. Right.

23 Q. Okay. What is needed in order for a hit
24 to be carried out?

25 A. You need to see the paperwork.

1 Q. What's the significance of that?

2 A. Some carnals try to get other carnals
3 killed for personal vendettas, personal issues. So
4 a lot of us were willing to go do the killing, and
5 willing to do that. We don't want to be used. So
6 we have to see it. So I told him, "Well, let me get
7 that, because I'm about to go to the South."

8 And the next day, the caseworker seen he
9 was living in the same unit as his victim, Paul
10 Silva. So they moved him back to 1-B. I never got
11 paperwork from him. I was in 1-A. I left without
12 the paperwork.

13 Q. Okay. So just to be clear, Mr. Calbert
14 had assaulted --

15 A. Paul Silva.

16 Q. -- Paul Silva. And Corrections realized
17 they were being housed -- and that was in 2011, if
18 you recall?

19 A. It was -- no, this was towards the end of
20 2013, before I went to the South.

21 Q. Okay. The conversation -- but I'm talking
22 about the assault.

23 A. The assault was -- oh, yeah. It was at
24 the Level 5 facility in 2011.

25 Q. The same year -- and around the time that

1 you had had the incident with Mr. Sosoya?

2 A. A few months prior to the Sosoya incident.

3 Q. Okay. So Mr. Calbert was moved?

4 A. Yes.

5 Q. And was that expected by you? That he
6 would be moved, I mean?

7 A. I knew -- I knew the administration was
8 going to move him.

9 Q. All right. Because they didn't want him
10 housed --

11 A. They didn't want him housed, and Silva was
12 still -- had a little bit of influence.

13 Q. So going to when you get down to Southern,
14 do you see Javier Molina?

15 A. I do.

16 Q. And what was your relationship with him?

17 A. Well, he was there the day I met Arturo
18 Garcia. And Arturo Garcia asked me if I wanted to
19 get down with the S. He was in the yard that day.

20 Q. So you knew him previously?

21 A. I've known him since 2005. We didn't have
22 a relationship back then, but I knew him.

23 Q. And when you came down to Southern, did
24 you remember him? And how would you describe your
25 relationship after that?

1 A. We didn't have a relationship at that
2 time, but he was hanging out with a good friend of
3 mine, Timothy Martinez. And that's how we became
4 friends.

5 Q. Who is Timothy Martinez?

6 A. He's a good friend of mine from the
7 streets. I've known him since we were little kids.

8 Q. And was he friends with Javier Molina?

9 A. Yes, they were very close.

10 Q. Okay. Now, Timothy Martinez, while he was
11 incarcerated -- was he involved in any sort of
12 business?

13 A. He was a hitter; they call them hitters:
14 Distribution of drugs, bringing in drugs, selling
15 drugs, a lot of money business. He was into the
16 money part of SNM.

17 Q. Now, when you say "hitter," you're
18 referring not to physical hits?

19 A. No, we call hitters people who go to
20 visits and bring in drugs, always have drugs.
21 They're just known to -- someone comes in the pod,
22 oh, he's a hitter. So everyone knows what that is.

23 Q. Was Timothy Martinez supplying you with
24 drugs at the time?

25 A. In Southern?

1 Q. Yes.

2 A. Yes.

3 Q. Who was he supplying?

4 A. The whole unit, the whole unit.

5 Q. So at some point in time when you were at
6 Southern, did you become aware of somebody coming
7 down that causes you to do something?

8 MS. BHALLA: Objection, Your Honor,
9 leading.

10 A. Before --

11 THE COURT: I don't know how else to ask
12 the question. Overruled.

13 A. Before I left the Level 5 facility at the
14 South, I sat down with Lupe Urquizo, Mauricio
15 Varela, and Robert Martinez, and told them to tell
16 David Calbert that I'm not going to do nothing to
17 Molina until I see the paperwork, to bring it, and
18 then I left.

19 Q. Okay.

20 A. I was aware that Mauricio Varela and Lupe
21 Urquizo were next after me to go to Level 4.

22 Q. And how did you know that?

23 A. Because that's the process. We were
24 staying out of trouble just to -- it's a
25 six-to-nine-month process to complete the level.

1 Q. All right. So you knew that, based upon
2 how long your time was there?

3 A. Yes. And we knew that Calbert was going
4 to be coming down to the Level 5 soon, too. That
5 was the group I was associated with. We all have
6 little groups, little cliques, that we associate
7 with. Those are my friends.

8 Q. Now, even though there are little cliques
9 within the group --

10 A. Right.

11 Q. -- is it still one organization?

12 A. One organization. Just friendships are
13 stronger than others.

14 Q. Now, at some point in March did you become
15 aware of something in reference to -- that you
16 thought might have something to do with paperwork?

17 A. Yes.

18 Q. Tell us about that.

19 A. The train got there. We knew that Lupe
20 Urquizo and Mauricio Varela were on the way to the
21 South facility.

22 Q. You mentioned the train. What do you
23 mean?

24 A. The transport vehicle. They were coming
25 from Level 5 down to Southern from Santa Fe.

1 Q. And how did you know that?

2 A. There is a chalk board in the control
3 center. And you'll see the CO wiping things off and
4 putting new names on. And their names on there.
5 There was another individual, too. I don't remember
6 his name, I know his nickname, Cartoon, but I didn't
7 know his real name. I didn't recognize it when I
8 seen it on the board.

9 Q. So you knew that Mr. Varela and Mr.
10 Urquizo were coming down?

11 A. Right.

12 Q. And what, in your mind, did that -- how
13 did that impact you?

14 A. I met with Dan. I told him, "I think the
15 paperwork is going to be here."

16 Q. When you say "Dan," who are you referring
17 to?

18 A. Daniel Sanchez.

19 Q. Does he have a nickname within the gang?

20 A. Dan Dan.

21 Q. Okay. And why would you have gone to
22 Dan Dan for -- because of this?

23 A. He's my big homie. He was the guy I
24 looked up to, and I respected him.

25 Q. Now, in the pod that you -- in blue pod,

1 was there a key-holder?

2 A. Yes.

3 Q. Who was the key-holder?

4 A. Daniel Sanchez.

5 Q. And you told him that the paperwork was
6 coming to you? What were you referring to?

7 A. I told him the paperwork was going to be
8 here. I was referring to the paperwork on Molina,
9 him working with the police department right here in
10 Cruces.

11 Q. And so what happened after that?

12 A. Mauricio Varela and Lupe Urquizo came to
13 the pod. They locked down yellow pod, and left us
14 out. I had already written a letter to Lupe Urquizo
15 based on -- letting him know who the llaveros --
16 that Benjamin Clark was trying to get him hit. And
17 then I was asking for a syringe, because there
18 wasn't that many syringes in the unit. I was pretty
19 much giving him the rundown of what was going on.

20 Q. Who were you giving that to?

21 A. To Lupe Urquizo. And as I wrote it, me
22 and Dan Sanchez were sitting at the table as I wrote
23 it, before he showed up. So when he comes into the
24 door, I called him to the conjoining doors.

25 Q. And who is "he"?

1 A. Who is who?

2 Q. Who?

3 A. Who? Who is who?

4 Q. Okay. You said that he came to the door.

5 A. Oh, yeah. I called Lupe Urquizo to the
6 door.

7 Q. Okay. And what door are you referring to?

8 A. The conjoining doors, the emergency
9 conjoining doors to each pod.

10 Q. And I'm going to show you the picture or
11 diagram. I'm going to show you -- I believe it's
12 Defendants' E-17. Okay. Can you see that picture?

13 A. Yes.

14 Q. I believe you were talking a little bit
15 about going to a door. Do you, by chance, see the
16 door in the picture?

17 A. That's the top tier conjoining door.
18 There is a bottom one, as well.

19 Q. Okay. So much like the diagrams we saw,
20 there is an upstairs and downstairs. Is there
21 another door just like the one that I'm circling on
22 the bottom level?

23 A. Yes, ma'am.

24 Q. Okay. And then I'm looking at the very
25 bottom. Does the door go all the way to the ground,

1 or is there a little bit of an opening there?

2 A. There is a crack under the door.

3 MR. VILLA: Your Honor, can we take a
4 quick break for Mr. Perez?

5 THE COURT: Why don't we maybe take a
6 little bit later lunch? Let's take a break here for
7 about 15 minutes, and we'll take a little bit later
8 lunch break. All rise.

9 (The jury left the courtroom.)

10 THE COURT: Did you have this V-17 as
11 being in evidence already?

12 THE CLERK: Yes.

13 THE COURT: All right. I must not have
14 written it down or it's on another piece of paper.

15 All right. We'll be in recess about 15
16 minutes, and then we'll take a little later lunch
17 break.

18 (Court stood in recess.)

19 MS. FOX-YOUNG: Your Honor, may I make a
20 brief record?

21 THE COURT: Go ahead.

22 MS. FOX-YOUNG: Your Honor, just for the
23 record, Mr. Perez has been asleep for large portions
24 of the testimony this morning, including the portion
25 where the witness was identifying who lived where,

1 with direct testimony about Mr. Perez. He's been
2 having a difficult time. As the Court heard, he did
3 have another coughing fit, and was awake for that
4 portion of the testimony. And then we want to thank
5 the Court for giving us a break so he could go take
6 care of what he needed to take care of. But he is
7 struggling. And we're not able to work with him
8 through the testimony.

9 THE COURT: I have been watching him. He
10 looks quieter today. As far as coughing, he did
11 cough there toward the end. It looked to me like he
12 was awake most of the time. I can't see his eyes as
13 well as you probably can with his glasses on. But I
14 did notice him moving a fair amount, either --
15 adjusting the mask. But I think he's been awake for
16 good portions of it.

17 Anything else while we're waiting for the
18 jury to come in?

19 What is it this bad act? What is that
20 issue?

21 MS. ARMIJO: Your Honor, it was an
22 incident in June 22, 1989. It is Mr. Baca's
23 murdering of another SNM Gang member. And Mr. Baca
24 spoke to Mr. Rodriguez about the incident.

25 THE COURT: And is this the reason this

1 one is important, is because it wasn't disclosed
2 earlier or --

3 MS. ARMIJO: No, the incident was
4 disclosed earlier. And we had it as -- I believe
5 Mr. Castellano argued for this incident. We had
6 it -- we disclosed the incident itself, and
7 everybody knew. But I believe at the time that we
8 were going over bad acts, I believe the Court
9 indicated that if we could prove it's SNM-related --

10 THE COURT: Okay.

11 MS. ARMIJO: And then based upon what Mr.
12 Rodriguez has told us, and that was disclosed, and
13 I'll give --

14 THE COURT: Let's do this: I'll let you
15 do it when you're about ready to offer it.

16 MS. ARMIJO: No, I'll offer it later. I'm
17 going through the --

18 THE COURT: Okay..

19 (The jury entered the courtroom.)

20 THE COURT: All right. Everyone be
21 seated.

22 All right. Mr. Rodriguez, I'll remind you
23 that you're still under oath.

24 Ms. Armijo, if you wish to continue your
25 direct examination of Mr. Rodriguez --

1 MS. ARMIJO: Thank you, Your Honor.

2 THE COURT: -- you may do at this time.

3 BY MS. ARMIJO:

4 Q. So Mr. Rodriguez, I believe before the
5 break we were showing you a picture of a door. And
6 was that door between blue pod and yellow pod?

7 A. Yes.

8 Q. I think the picture was actually of the
9 upper-level door. Is there one on the lower level,
10 as well?

11 A. There is.

12 Q. And I believe you were talking about
13 something in referencing that door. Could you again
14 remind us what you said about that door?

15 A. Okay. The day Lupe Urquizo showed up, I
16 went to the bottom door. I called him to the bottom
17 door. I already had written a letter to him letting
18 him know what was going on on the politics, who was
19 on the tabla, asking him for his syringe, just
20 pretty much a rundown of what was going on in the
21 unit.

22 Q. Was that the letter that you said you sat
23 down and wrote when you were sitting at the table?

24 A. At the table, yes, with Dan. Dan was
25 sitting at the table with me at the time.

1 Q. And how was it that Mr. Urquizo was in
2 yellow pod? I mean, were there other gang members
3 there, or -- I believe you said something about
4 clearing out something.

5 A. They locked down the unit. When new
6 people come, they lock down the unit because they
7 got to go to orientation first.

8 Q. And what does "lock down the unit" mean?

9 A. They make everyone go to their cells, they
10 close all the doors.

11 Q. Okay.

12 A. They let the new inmates come in.

13 Q. Okay. So as far as you are aware, the
14 inmates that had been staying at yellow pod were
15 locked down in their cells?

16 A. Yes, ma'am.

17 Q. Okay. And do you recall what date that
18 was?

19 A. That was Thursday, the day before the
20 Molina murder.

21 Q. And you indicated you passed a note to Mr.
22 Urquizo?

23 A. I -- me -- I took Timothy Martinez to the
24 door with me. I introduced him to Timothy Martinez,
25 and I asked him, "Where is the CO at?"

1 He said, "He's over there with Archie."

2 I put the letter on the floor, and I
3 kicked it to him. I told him, "Get that."

4 And I introduced him to Timothy. I asked
5 him if he still had a syringe. And he said, "Yeah."

6 I told him, "Don't tell them you have it.
7 Just let me get it," because there was only one
8 syringe in the unit.

9 So he left, they locked him down, and that
10 was it. I introduced him to Timothy Martinez, and
11 he went on lockdown.

12 Q. Why did you introduce him to Timothy
13 Martinez?

14 A. Because Timothy was my friend, and, you
15 know, he was the hitter. And Lupe was one of my
16 good buddies, so I wanted Urquizo in on the ride.

17 Q. Now, at some point, do you get paperwork?

18 A. I do.

19 Q. And that is on the same day, on Thursday,
20 or is that the next day?

21 A. The next day.

22 Q. What happens the rest of the day, in
23 general, on Thursday?

24 A. All right. He responded to my letter,
25 which Carlos Herrera brought me that letter that he

1 responded to my initial letter, telling me that --

2 Q. "He" being who?

3 A. Lupe Urquizo was telling me that he was
4 next door to -- I think his name is Gumby, who had
5 got him jumped in the past, and he was going to stab
6 him. And then pretty much gave me a rundown what
7 was going down with him and Archie, as far as who
8 they were going to go after, and stuff like that.

9 I wrote him back after reading that
10 letter, and I told him not to stab Gumby; just to
11 beat him up; that he wasn't worth going back to the
12 North. And I asked him again, "What's up with that
13 paperwork?"

14 And he didn't respond to -- the initial
15 one I asked him in the letter, he didn't respond to
16 it. The one I sent him back to his response, he
17 didn't respond to it.

18 Q. Okay. So you sent him a total of two
19 letters?

20 A. Sent him a total of two letters. He sent
21 me one.

22 Q. Okay. And you're looking for the
23 paperwork?

24 A. I was asking for the paperwork.

25 Q. And that was on the 6th. Do you recall

1 approximately what time of day that was? Was it in
2 the morning? Was it at night?

3 A. It was before the 4:00 count. So it was
4 throughout the day from around maybe -- they got
5 there about maybe 12:00.

6 Q. I guess I'm going to ask you a little bit
7 about was going on at that time. You mentioned 4:00
8 count.

9 A. Right.

10 Q. What is that?

11 A. 4:00 count wasn't going on yet. But 4:00
12 count is when everyone locks down in the unit, and
13 the COs go through and take numbers of -- where the
14 inmates are. It's the official prison count.
15 Everyone in the whole prison is making sure no one
16 has escaped or no one is missing or anything like
17 that.

18 Q. And does that happen throughout the day at
19 specific times?

20 A. I think it happens three times a day.

21 Q. Does it happen even at nighttime?

22 A. It does.

23 Q. And for count, do you have to go in your
24 cell?

25 A. You have to go in your cell, yes, for an

1 hour.

2 Q. For an hour?

3 A. Yes.

4 Q. Okay. So nothing happens that night?

5 A. No.

6 Q. And we're on, now, March 6, I believe
7 of --

8 A. That's March 6.

9 Q. Okay. A Thursday night?

10 A. Right.

11 Q. What about the next morning?

12 A. The next morning we're getting ready to go
13 to -- it's Friday, so we're going to go to gym and
14 big yard, which is two big cages inside of the GP
15 yard.

16 Q. When you say "GP" --

17 A. General population yard.

18 Q. So you were getting ready to go -- is that
19 called something specific? Is it --

20 A. Big yard or gym. We go once a week, and
21 we alternate. One pod will go to gym; two pods will
22 go to outside rec, and then alternate.

23 So we were going then. And before going
24 out, you walk out of your pod and you all are in the
25 middle of the unit, right below the control center.

1 So you can see all three doors: Yellow pod, green
2 pod, and blue pod.

3 I went to yellow pod, and I called Carlos
4 Herrera to the door. And I asked him, "Does he have
5 that?"

6 He goes, "Yeah, yeah." He thought I was
7 talking about the syringe.

8 I told him, "No. Come here. Come to the
9 door. Does he have the paperwork?"

10 "Hold on."

11 He goes and talks to Marijuano, and
12 Marijuano tells him, "Yeah, I got it."

13 He comes back and tells me, "He gets it.
14 They'll send it to me later."

15 Q. Where was this conversation again?

16 A. This conversation was in the unit below
17 the control center. It's like a sally port that
18 connects all three pods.

19 Q. Okay. And so you were standing there?

20 A. I was standing in front of yellow pod
21 door.

22 Q. So we're not talking about the door that
23 we had seen before.

24 A. No.

25 Q. It's actually -- if I could get the

1 diagram of the three pods up again?

2 A. It's in the pod.

3 Q. 162. Are you familiar with this diagram,
4 again?

5 A. Yes, ma'am.

6 Q. Now, is the area where you were
7 standing -- is that area depicted in here?

8 A. Yes, it is.

9 Q. Okay. And let's see. I believe we had
10 previously said that the bottom one is blue pod;
11 correct?

12 A. Right.

13 Q. And so you said that you went -- you were
14 going outside?

15 A. You see where it says "pod entrance/exit"?

16 Q. Right here?

17 A. Right there.

18 Q. Okay.

19 A. Each pod entrance/exit is the door going
20 into the pods, individual pods.

21 Q. Okay. Like this area, or not?

22 A. That's the front door to the whole unit.

23 Q. Okay.

24 A. Okay. See where it says "officer station
25 area"? That's the control center. It's above --

1 the white part around it is the sally port, where
2 you can go to each door.

3 Q. Okay. So if you're standing here --

4 A. Right, standing there.

5 Q. -- you can go and talk to --

6 A. Each door. Anyone in each different pod.

7 Q. Okay. And so if you're standing here --

8 A. Right.

9 Q. -- you can talk to the people in yellow?

10 A. Yes. And you'll see -- Carlos Herrera
11 came to the other side of the door. You see where
12 the middle cell is? That's where Lupe Urquizo was
13 at. I could see him from the front door.

14 Q. You said the middle cell.

15 A. Right.

16 Q. Like over here?

17 A. No, to the other side.

18 Q. I'm sorry.

19 A. It's the same cell you just highlighted,
20 but the other side. In the same pod.

21 Q. Here?

22 A. No, keep going.

23 Q. Here?

24 A. No, next one.

25 Q. Here?

1 A. Right there.

2 Q. The cell that I'm now circling?

3 A. The one next to it.

4 Q. This one?

5 A. No, the one right there.

6 Q. I'm sorry. Can you touch the screen or
7 no?

8 A. There's four cells. See the first one you
9 highlighted? The one right next to it.

10 Q. This one?

11 A. No, the next one.

12 Q. This one.

13 A. Yes, that one.

14 Q. So we now finally have on Exhibit 162 --

15 A. That's where Lupe Urquizo lived.

16 Q. And so he had already been placed into the
17 pod; correct? Yellow pod?

18 A. Yes.

19 Q. So was he allowed to come out with
20 everyone else?

21 A. No. He was on orientation.

22 Q. He was on orientation?

23 A. Yes.

24 Q. That's the seven-day period that you spoke
25 about before?

1 A. Yes, ma'am.

2 Q. Okay. Now -- and so where were you
3 standing when you were talking? It says "pod
4 entrance door." Is that where you were?

5 A. Yes. The door is closed right there. I'm
6 standing right there. And Carlos Herrera is
7 standing on the opposite side.

8 Q. Okay. And is there a window through that
9 door?

10 A. Yes. There is a little window. There is
11 the door, and there is the window. It's a
12 rectangle.

13 Q. So you can see who you're talking to?

14 A. You can see who you're talking to.

15 Q. And you can hear them?

16 A. Yes.

17 Q. Can you see in the pod?

18 A. Yes.

19 Q. So you were actually able to see where
20 Lupe was?

21 A. Yeah.

22 Q. And then you were able to see who you were
23 talking to?

24 A. Yes.

25 Q. And who were you talking to?

1 A. Carlos Herrera.

2 Q. All right. And this is before you were
3 going to be going out to the gym.

4 A. The yard.

5 Q. To the yard.

6 A. The gym yard, yeah.

7 Q. So what happens there when you're talking?

8 A. Okay. He tells me, Yeah, that he'll get
9 it to me later. So we go to yard, and myself and
10 Daniel Sanchez go and talk to an individual named
11 Ernest Guerrero about not letting nothing happen to
12 Lupe Urquizo. We go to yard, and do our one-hour
13 yard. And we seen that -- I think Archie's property
14 was coming.

15 Q. Okay. Now, I'm going to stop you right
16 there. When you were at the door talking to Mr.
17 Herrera, were you alone?

18 A. Yeah. I was alone. Everyone else was
19 around me, but the conversation was just through the
20 door.

21 Q. Okay. So then at some point, you see that
22 Archie Varela is getting his property?

23 A. While we're in yard.

24 Q. How do you see that?

25 A. Because he was the last one to get his

1 property. And we can see whoever comes into the
2 unit from the yard.

3 Q. And how did you know that was Archie
4 Varela's?

5 A. Because he was the last one waiting for
6 his property. He was asking for canteen prior,
7 because he hadn't got his property yet.

8 Q. How is property transported?

9 A. You go from -- one facility inventories it
10 to the next, and they're supposed to inventory it
11 there.

12 Q. Is in it a box, a suitcase?

13 A. It's in a big trash bag.

14 Q. And is that trash bag clear?

15 A. It is.

16 Q. So after you see that, and after yard,
17 what do you do? I mean, do you go back inside?

18 A. Yeah, we go back inside.

19 And Carlos Herrera called me to the
20 conjoining door on the bottom, the emergency exit.

21 Q. The one that you were talking to the night
22 before, to Mr. Urquizo?

23 A. Yes, yes.

24 Q. Okay.

25 A. He slides me under a manila envelope with

1 legal work in it.

2 Q. Okay. And does Carlos tell you anything?

3 A. Not at that time, no.

4 Q. How do you know it was Carlos?

5 A. I know his voice. I know him. I talk to
6 him.

7 Q. Did he call you, say, "Hey, Mario" --

8 A. "Hey, Blue, open the door." I went to the
9 door, and he was here.

10 Q. Hey who?

11 A. Blue. B-L-U-E.

12 Q. So he was calling you?

13 A. Yes.

14 Q. Okay. And so he called you over to the
15 door?

16 A. Right.

17 Q. And he said it was a manila envelope?

18 A. Right.

19 Q. Did it have anything on the outside of it?

20 A. Not that I remember.

21 Q. You said it was legal paperwork.

22 A. It was legal paperwork, yes.

23 Q. How do you know it was legal paperwork?

24 A. Because it was Lupe Urquizo's name, and
25 that's usually how we transport paperwork. We'll

1 get the statements and we'll take apart the staple
2 and put the statement inside the real legal work and
3 cover it up.

4 Q. Did the outside of the envelope have
5 anything that said, like, Lupe Urquizo -- did it say
6 legal work?

7 A. No, legal work had his name on it. His
8 appeal to one of his state convictions.

9 Q. Okay. So you get this envelope, and what
10 do you do with it?

11 A. I take it to -- I called Dan, and I take
12 it to right there in front of my cell 111. There is
13 like a stoop. And me and him sit there and we read
14 it. We're sitting next to each other and we read
15 it. He's reading it at the same time I'm reading it.
16 And he says, "It's done."

17 I hadn't finished reading it yet. And
18 told him, "All right. It's done." So --

19 Q. Now, what did you take "It's done" to
20 mean?

21 A. It's done. The guy is done. It's time to
22 kill him.

23 Q. What do you recall -- you said you hadn't
24 finished reading it before Mr. Sanchez said, "It's
25 done." What do you recall, as best you can, was

1 inside that paperwork?

2 A. What I noticed is that his name was in
3 bold letters, other than like the rest of the typing
4 was regular. And Javier's was in bold writing with
5 an underline from, like, a computer. And I was
6 waiting to see if he gave up names. There was no
7 names he gave up. He just said that he was the
8 driver of a car; that a guy in the backseat got out,
9 came back running with a purse, or something, and
10 told him to go. The guy in the front got the purse
11 and threw it out. I forget the street name, but he
12 identified the street name where the purse was
13 thrown out. It was a robbery of some lady with a
14 purse.

15 Q. Do you recall if it was one page or two,
16 if you remember?

17 A. I don't remember. I just remember that
18 page.

19 Q. Okay. And --

20 A. There might have been three pages to the
21 whole thing.

22 Q. But you don't recall?

23 A. I don't recall exactly how many.

24 Q. Because you were only able to look at one
25 page, as you recall?

1 A. I think I went through the whole thing
2 eventually, but the main focus was on that page.

3 Q. Okay. And then Mr. Sanchez said, "It's
4 done"?

5 A. "It's done."

6 Q. What happens after that?

7 A. I take it back to Lazy at the door, and he
8 goes --

9 Q. And who is Lazy?

10 A. Carlos Herrera.

11 Q. Okay.

12 A. I call him to the door. I gave it back to
13 him. He goes, "Well, I'm going to go show green
14 pod."

15 And I said, "Don't fucking show green pod.
16 Don't trust them fuckers in green pod. Don't show
17 them."

18 He got kind of mad. He goes, "I have to.
19 They're on the tabla."

20 I said, "Just don't show green pod," and I
21 left.

22 Q. Why did you not want green pod to see it?

23 A. Because I didn't trust the guys in there.
24 They had a lot of clear conduct, and I didn't trust
25 them.

1 Q. Were all three pods SNM Gang members?

2 A. Yes.

3 Q. So you give it back to him and you ask Mr.

4 Herrera not to --

5 MS. BHALLA: Objection, leading.

6 THE COURT: Overruled.

7 BY MS. ARMIJO:

8 Q. You asked Mr. Herrera not to give it to
9 green pod. What do you do after that?

10 A. I go and I start talking to Dan Dan.

11 Q. Okay. And was there -- when you were with
12 Mr. Herrera, did you have any other conversation
13 about when it would happen?

14 A. Not yet.

15 Q. Okay. So you then go to Dan Dan, and what
16 happens then?

17 A. I told him, "Me and you or what?"

18 He goes, "No."

19 Q. What did you mean by "me and you"?

20 A. He and I would go kill Molina. So "Me and
21 you?"

22 MR. LOWRY: Your Honor, this is a perfect
23 time to give a limiting instruction.

24 THE COURT: All right. So these
25 statements can be used against Mr. Sanchez, but not

1 as to the other defendants in the case. So you can
2 use it only in your consideration of the charges
3 against Mr. Sanchez.

4 Ms. Armijo.

5 MS. ARMIJO: Thank you.

6 BY MS. ARMIJO:

7 Q. And so he says, "Me or you or what?"

8 A. No, I told him, "Me and you or what," like
9 insinuating that me and you are going to do it. He
10 said, No, that we'll figure it out.

11 So then we continue to talk. I asked him,
12 "What about the cameras?"

13 He said, "Don't worry about the cameras."
14 He told me, "There's some guys need to earn their
15 bones."

16 So he chose Timothy Martinez. But he
17 expressed to me that Timothy Martinez wouldn't
18 listen to him; that I needed to tell him.

19 Q. You said he said -- I'm going to back you
20 up just a minute -- that there were some people that
21 needed to earn their bones?

22 A. Yes.

23 Q. What does that mean?

24 A. Well, in the SNM, you're not really a made
25 member until you stab someone. If you go and stab

1 someone, like an enemy, on your own, that can be
2 earning your bones. But when you're told to do
3 something, that's earning your bones. You're under
4 the gun. You've got to do it. It's time for you to
5 earn your bones.

6 Q. You mentioned Timothy Martinez. What
7 about him?

8 A. He told me he wanted Timothy Martinez,
9 Jerry Montoya, and Jerry Armenta. And I expressed
10 to him that I didn't think they were up to it. I
11 didn't think Jerry Armenta was really about it.

12 Q. So both Jerrys?

13 A. Right. And plus we -- earlier, Calbert
14 had told me that Jerry Armenta was a rat. So I
15 really didn't want to use him, no. And he goes,
16 "No, it's time for him to go. He's done 16 years,
17 and he hasn't done shit yet."

18 So Jerry Armenta is his friend. That's
19 his buddy. So he's in control of that. He's
20 supposed to tell both Jerrys. I'm just supposed to
21 tell Timothy Martinez.

22 Q. Whose decision was that?

23 A. Dan Dan's.

24 Q. Okay. And you mentioned Timothy Martinez,
25 something about -- why was he picked?

1 A. Because Dan Dan didn't think -- Dan Dan
2 had issues with him. There was rumors about Timothy
3 Martinez punking him out, or some shit like that.
4 And he didn't feel Timothy would be up to it. And
5 he knew if Timothy didn't do it, he can get him out
6 of the picture. Me being the loyal person I was to
7 the SNM, and Timothy being from my city, he knew I
8 would take it upon myself to stab him, if he didn't
9 do it.

10 Q. And is this the same Timothy Martinez that
11 you said you introduced to Urquizo the night before?

12 A. Same Timothy Martinez I introduced.

13 Q. And what's his nickname in the gang?

14 A. Red.

15 Q. Does he have red hair?

16 A. He does.

17 Q. So what instructions are you given, if
18 any?

19 A. Okay. At this time, there was just the
20 choosing of them. Then we need to find weapons. We
21 sat down -- that's when I asked him about the
22 camera. He said, "Don't worry about the camera."

23 It was going to happen in Molina's room.
24 And I told him, "That's not a blind."

25 He goes, "It's a blind spot. The cameras

1 can't see in the room."

2 I'm, like, "Fuck it."

3 Then he told me to go tell Lazy that it
4 would happen after cuenta.

5 Q. Okay.

6 A. I went and told Lazy, "After count, it's
7 going to happen."

8 Q. When you say "Lazy," you're referring
9 to --

10 A. Carlos Herrera.

11 Q. And how was it that you went to tell Lazy?

12 A. I went to the conjoining emergency door at
13 the bottom.

14 Q. I mean, do you call for him? What did you
15 say?

16 A. You just yell out, "Hey, Lazy," through
17 the crack of the door. And they'll hear you and
18 come to the door.

19 Q. Did he come to the door?

20 A. He came to the door.

21 Q. And what did you do?

22 A. I told him after cuenta, after count.

23 Q. What does "after cuenta" mean?

24 A. It means that -- the 4:00 count, the doors
25 open back up at 5:00. We go in for lockdown, so

1 they can do the whole counting of the facility.

2 Q. And what was the purpose of telling him
3 after cuenta? What did you mean by saying after
4 cuenta? What were you referring to?

5 A. That the murder was going to take place.
6 We're going to move on him.

7 Q. And why was it that you told Carlos?

8 A. Because Dan told me to.

9 Q. And do you know why?

10 A. Now that I think about it, no, I don't.

11 Q. Did Carlos say anything back?

12 A. He said, "All right."

13 Q. So after that, what do you do?

14 A. All right. So while I was telling Lazy,
15 he was at Rudy Perez' door talking to Rudy. I
16 walked by him, because we needed to find some
17 weapons. The weapons we had were just one-hitters.
18 They're icepicks. And he wanted to do it a
19 stabbing, you know, so --

20 Q. Who is "he" wanted to do a stabbing?

21 A. Daniel Sanchez wanted it to be a stabbing.

22 So I had been working on taking a
23 double-edger off my hamper. I was cutting the
24 metal. And I was in my room seeing if I can get it
25 off really fast. And he was talking to Rudy Perez.

1 He called me over, "Hey Blue, come here."

2 I went over. And Rudy Perez' door was
3 closed. Rudy was at the door.

4 Q. Okay. Now wait. Just to reference this,
5 I'm going to show -- if I could have the Elmo again,
6 Ms. Standridge. Thank you.

7 All right. Just for referencing sake, I
8 believe this is Exhibit Number 752, which you
9 previously had said -- I'm pointing to Room 115.

10 A. Right.

11 Q. Is that correct?

12 A. Yes, ma'am.

13 Q. Now, on this diagram, it doesn't show it,
14 but can you tell the jury where that door would be
15 that -- if it's in this area, where the door would
16 be for yellow pod?

17 A. It's the line to the right where it says
18 "lower walkway," like a long rectangle, that line
19 right there. That's the door.

20 Q. This whole line here?

21 A. Just that block right there. From the
22 cell to the other line, the parallel line.

23 Q. Here?

24 A. Yes.

25 Q. Sorry. So that's where you were when you

1 were talking to Carlos Herrera?

2 A. Yes, ma'am.

3 Q. And then when you turned around after
4 that, where was Mr. Sanchez?

5 A. In front of Rudy Perez' cell, talking to
6 Rudy.

7 Q. Okay. I'm putting my finger in front of
8 115.

9 A. Right.

10 Q. And so is that a close area there?

11 A. Yes. Right at the front door, right at
12 Rudy's front door.

13 Q. And at this point -- prior to this, you
14 were talking a little bit about not having what you
15 thought would be the correct weapons?

16 A. Right.

17 Q. Okay. You mentioned "icepick"; what's
18 that?

19 A. It's an icepick. It's a long, thin, like
20 about a pencil-sized shank.

21 Q. Okay. So an icepick is a type of shank?

22 A. Right. I was in 111, right there, while
23 he was talking to Rudy Perez. I went from the
24 adjoining -- the door, talking to Carlos Herrera, to
25 my cell.

1 Q. Which is all the way right here?

2 A. Right. And I had my door open, and I was
3 looking at the hamper.

4 Q. Okay. I drew a line from where you were
5 talking, to your room, which is 111?

6 A. Right.

7 Q. Okay.

8 A. And then while I was messing with the
9 hamper, Dan called me to -- what is it? 115? Rudy
10 Perez' cell.

11 Q. And you were not in there for -- you said
12 that you had seen Daniel Sanchez at the door?

13 A. Right, talking to Rudy.

14 Q. Okay. Is that when you walked by, from
15 when you were talking to Carlos?

16 A. Yes.

17 Q. And you didn't overhear the conversation,
18 did you?

19 A. No, I did not.

20 Q. What was -- was it soft tones that they
21 were talking? I mean --

22 A. I just wasn't paying -- I was to go find a
23 weapon.

24 Q. You didn't hear any screaming or anything?

25 A. No.

1 Q. You didn't hear anything that caused you
2 any alarm? Or did you?

3 A. No.

4 Q. Okay. So then now Daniel Sanchez calls
5 you over to Rudy Perez' cell?

6 A. Right.

7 Q. What happens then?

8 A. Rudy Perez steps to the side and tells
9 me -- he points to the bar on the walker, "Get it."

10 Q. Who points to it?

11 A. Daniel Sanchez. Rudy steps to the side.
12 Daniel points to the walker and says, "Get that
13 right there. Make them out of that."

14 Q. Okay. And what was he pointing to?

15 A. To -- there is a walker, and when it opens
16 up, there's two conjoining pieces of metal that
17 is -- has a bar connecting them all the way across.

18 Q. Okay. I'm going to show on Exhibit 88 --
19 which I believe has been admitted --

20 A. Right. That's it.

21 MS. FOX-YOUNG: Your Honor, may we
22 approach?

23 THE COURT: You may.

24 (The following proceedings were held at
25 the bench.)

1 MS. FOX-YOUNG: Your Honor, if you don't
2 mind, Mr. Villa is handling this witness, but if the
3 Court would just let me make a record because Mr.
4 Villa has been taking notes. Mr. Perez is sleeping
5 through the testimony. This is the most critical
6 part of the testimony regarding his involvement. We
7 are trying to give him caffeine. We're banging on
8 his arm. But I want to let the Court know he's
9 really sick, and not alert. We can't communicate
10 with him. We're doing our best, Judge, short of
11 knocking him over his head.

12 THE COURT: If you doze in court and
13 sleep, what am I supposed to do?

14 MS. FOX-YOUNG: He's sick.

15 THE COURT: There are other people sick.
16 The jurors are sick.

17 MS. FOX-YOUNG: I'm just making a record,
18 Judge.

19 (The following proceedings were held in
20 open court.)

21 THE COURT: Ms. Armijo.

22 BY MS. ARMIJO:

23 Q. And I believe it was Exhibit Number 89
24 that we're looking at, for the record.

25 THE COURT: Has it been admitted?

1 MS. ARMIJO: It has been admitted.

2 BY MS. ARMIJO:

3 Q. All right. Mr. Rodriguez, what are we
4 looking at?

5 A. Rudy Perez' walker.

6 Q. And how are you familiar with this walker?

7 A. With the streamers, the sheets tied to the
8 bottoms, where I took the bar from.

9 Q. Okay. So were those streamers at the
10 bottom there before you took anything from them, or
11 afterward?

12 A. No, they were after. He did that. I just
13 took the bar and left.

14 Q. Okay. So I believe you were saying that
15 Daniel Sanchez pointed to something?

16 A. Pointed to the bar.

17 Q. To this walker that we're seeing here in
18 Exhibit 89?

19 A. Yes.

20 Q. And what did he say?

21 A. "Get that right there."

22 Q. What was he referring to, "that"?

23 A. That bar.

24 Q. Okay. Now, was there a bar that we're not
25 seeing?

1 A. Right now, yes, it's missing right now.

2 Q. And where was it at?

3 A. You see on the left side where there is a
4 piece of sheet?

5 Q. Yes.

6 A. Okay. There is a left side, the right
7 side, you can't really see it -- there is a piece of
8 sheet tied there, too.

9 Q. Right over there?

10 A. It connects those two -- the piece --
11 yeah, exactly, the pieces of metal that come from
12 the walker on each side slide up next to each other,
13 and the screw goes -- the bar has a threaded end of
14 it, and the bolt's on the opposite side.

15 Q. All right. And so --

16 And 90 is in? Can we display 90? All
17 right.

18 The same walker?

19 A. Yes.

20 Q. And how do you recognize it again?

21 A. The streamers on the side.

22 Q. And so I'm going to draw a line from one
23 piece of white to the other. Did there used to be a
24 bar there?

25 A. Yes, there was.

1 Q. And what did you do?

2 A. I took it off.

3 Q. How did you take it off?

4 A. All right. When Daniel Sanchez told me to
5 get it, I waved to the CO in the bubble; told him to
6 open his door. I opened the door. The CO opened
7 the door.

8 Q. Okay. So when Mr. Sanchez says, "Get
9 that," is the door closed?

10 A. The door is closed.

11 Q. And can you see into the cell?

12 A. Yes. There's windows. The same windows
13 that are in each front pod door are in each cell,
14 long rectangles.

15 Q. And I'm going back just for a minute.
16 When you had walked by before and Mr. Sanchez was
17 talking to Mr. Perez, were the doors open or closed?

18 A. Closed.

19 Q. Okay.

20 A. You can only have one door open at a time.

21 Q. Can you have a conversation through the
22 doors?

23 A. Yes.

24 Q. Okay. So did it appear to you, even
25 though you're not part of conversation, that Mr.

1 Sanchez was having a conversation with Mr. Perez?

2 A. Yes.

3 Q. Now, then, you're called back over. The
4 door is still closed?

5 A. Yes.

6 Q. And then when Mr. Sanchez said, "Get
7 that," how could you tell what he was referring to?

8 A. Because the walker was sitting back by the
9 toilet, and he was pointing to it.

10 Q. So you could see it?

11 A. Yeah, I seen -- when I seen -- when I
12 looked at it, that's the first thing I seen, was the
13 long bar.

14 Q. Okay.

15 A. He was pointing -- it's obvious what we're
16 looking for.

17 Q. So then you motioned for the door to be
18 opened?

19 A. Right.

20 Q. And then is the door opened?

21 A. The door is opened. My door is closed.
22 Cell 111 is closed, and they open up Rudy Perez'
23 door.

24 Q. Okay. Again, because you said only one
25 door could be opened at a time?

1 A. Yes.

2 Q. What time of the day is this, as far as
3 Corrections? Is this tier time? Rec time? What is
4 it?

5 A. It's open unit. Before, we were on tier
6 time. They just opened up all the cells now. So we
7 were just on pod restriction, pretty much. We all
8 just go use the phone, microwave, watch TV. You can
9 go to your room if you want. You can come out.

10 Q. And what time, approximately, was it? Let
11 me put it in reference to something. Was it before
12 count?

13 A. Yes, yes.

14 Q. And what time is count, again?

15 A. It might have been before -- it was
16 after -- it was around maybe 1:00 that this
17 happened. Let me see. Because we go to yard at
18 3:00, so this was around 2:30, 2:00.

19 Q. Okay. So you motion to get in?

20 A. Right.

21 Q. Okay.

22 A. Okay. So Rudy is right there. I get the
23 walker. And I put it up, like, on the bunk. I tilt
24 it sideways. And when I was trying to take the bolt
25 off, I turned around to ask Dan for some nail

1 clippers or something. He was gone. He left the
2 cell.

3 Okay. So I got some nail clippers that
4 were right there. I started taking it off. And
5 then Rudy tells me, "I'm down for whatever, as long
6 as it's not me. I'm down for whatever."

7 I told him, "Don't worry about it. It's
8 all good."

9 I was just getting the pole off. I got
10 it. I put it on the long side of my pant leg, and I
11 walked out.

12 Q. When he said that to you, a regular,
13 normal tone?

14 A. Yes.

15 Q. Anything unusual about the way he spoke,
16 as far as his mannerisms or anything else?

17 A. No.

18 Q. Now, I'm going to show you -- you
19 indicated that you had to unscrew it?

20 A. Right.

21 Q. What do you do -- you said you put it in
22 your pants?

23 A. Right.

24 Q. And what do you do with them?

25 A. I go to my cell. Before I go to my cell,

1 I get by that same stoop that Dan and I read the
2 paperwork at. I looked up, and Dan Dan had locked
3 himself in his room. So I go to my cell, and I put
4 it in my hamper.

5 Q. Why did you put it in your hamper?

6 A. Just to have it for -- I was going to
7 break it up for cuenta, for count, for the one-hour
8 count.

9 Q. So do you leave it there?

10 A. I leave it there until they're about to go
11 to yard. I went into my room. They were going to
12 go to phone yard, which was at 3:00.

13 Q. Okay.

14 A. So I pulled my curtain up in my room, and
15 begin breaking it.

16 Q. Why do you put your curtain up in your
17 room?

18 A. So no one could see in. No one could see
19 my room. I put a towel with a spoon. And I bend
20 the spoon, and the tension keeps the towel in the
21 window. So if the CO is coming in, they want to
22 know what I'm doing, I just tell them I'm using the
23 restroom. None of the inmates seen me; Dan and I
24 are the only ones that knew, other than Rudy, that
25 the bar was missing. Dan and I only knew what was

1 going on with the bar.

2 Q. Okay. So you stay in the room for how
3 long?

4 A. I'm in the room before they go to yard.
5 And Javier Molina keeps telling me, "Let's go to
6 yard."

7 I told him, "I'm using the restroom. Just
8 go ahead."

9 He goes, "We're going to wait for you."

10 I said, "No, just go. I'm going to stay
11 in."

12 So they finally go, and I start putting
13 the bar -- there is a heater, and there is little
14 holes like grates, and I put it inside the hole, and
15 I begin breaking it, bending it back and forth.

16 Q. How many pieces do you break it into?

17 A. Three.

18 Q. I'm showing on the Elmo what is
19 Government's Exhibit 2. Can you see that item?

20 A. Yes.

21 Q. All right. And I'm going to pick it up --
22 it's Exhibit Number 2. All right. Now, I'm
23 pointing to the left side of it, which is -- has a
24 tip at it?

25 A. Right, there's threading.

1 Q. Okay. Now, where would that threading --
2 where did you get --

3 A. That threading was on the ends. There was
4 threading on this end, threading on both, so the
5 right and left ends of the bar, which held it
6 together on the walker with the bolts.

7 Q. Okay.

8 A. The nuts.

9 Q. Did it have this sharp point?

10 A. No.

11 Q. Who did that?

12 A. I did.

13 Q. How did you do that?

14 A. I sharpened it on the floor.

15 Q. All right. I'm going to go to the other
16 end of it. Can you see that?

17 A. Yes. That's the end that I broke off from
18 the other one.

19 Q. Okay. You say "the other one." Are you
20 aware of this item?

21 A. Yes.

22 Q. What's that item?

23 A. That item is a rope that you tie to the
24 end of the weapon that goes around your wrist. So
25 when you're in one-on-one combat with another

1 inmate, you don't lose your shank, and it's not used
2 against you.

3 Q. Did you actually put it on that?

4 A. Yes.

5 Q. Referring to Government's Exhibit number
6 3, do you see that item?

7 A. I do.

8 Q. All right. Okay. This item is bent.

9 A. Right.

10 Q. Is this the way you retrieved it?

11 A. No.

12 Q. How was it when you retrieved it?

13 A. It was straight like the other one.

14 That's the end of the other one.

15 Q. Okay. I'm showing the --

16 A. It was straight.

17 Q. It was straight?

18 A. Yeah. There is no threading on the end of
19 that one.

20 Q. Okay. And was it pointed?

21 A. When I got it?

22 Q. Yes.

23 A. No. I did that.

24 Q. You did that?

25 A. Yes.

1 Q. And this part was straight?

2 A. Yes.

3 Q. Okay. Does it do -- at some point after
4 the homicide, do you get it and do something with it
5 that causes it to be in this condition?

6 A. Yes. Jerry Montoya throws it from the
7 bottom tier to the top tier. I picked it up, took
8 it to the shower, and began bending it to put it
9 down the drain. I took a razor blade to the handle.
10 I cut the handle off, and put it in the drain all
11 the way.

12 Q. Okay. So while you're making this into a
13 weapon, was it still straight?

14 A. Yes.

15 Q. And do you recall what eventually -- who
16 has this eventually?

17 A. Jerry Montoya. The reason why it's bent
18 is because the drain goes like an L, so I had to
19 bend it to go down the drain.

20 Q. Now, I'm showing you Government's Exhibit
21 Number 7. Are you familiar with this item?

22 A. Yes.

23 Q. How so?

24 A. That's the extra piece. And I believe
25 that one has threading on it that's untouched.

1 Q. Okay. On the right side of the screen,
2 where it's being displayed, is that the threading?

3 A. Yes, it is.

4 Q. What did you do with this item?

5 A. I put it in a honey jar with napkins and
6 threw it in the trash and covered it with a brown
7 paper bag.

8 Q. Is this --

9 A. There's napkins inside of it, yeah.

10 Q. So you put it in there?

11 A. Yes.

12 Q. Was this to be used by anyone?

13 A. Just extra, just to throw it away, to get
14 rid of -- I didn't know that the weapons were going
15 to be found, so that was just to throw it away.

16 Q. Where did you throw it away?

17 A. In the trash can.

18 Q. Where was the trash can?

19 A. Right there in the pod. When you're
20 going -- the stairs that are going upstairs, there
21 is a trash can right next to it.

22 Q. All right. So you make two weapons and
23 you have an extra piece that eventually you throw
24 away in the trash can?

25 A. Yes.

1 Q. How long did it take to make those
2 weapons?

3 A. About 30 to 45 minutes.

4 Q. And then at some time -- and you're doing
5 this during, as you say, cuenta?

6 A. I had broken down before cuenta, before we
7 locked down, because I had to come out and talk to
8 Timothy before cuenta. So when I broke them down
9 into pieces, I put them under my mattress. So when
10 cuenta came, I was sharpening them.

11 Q. Let's go back. You said you had to talk
12 to Timothy.

13 A. Right.

14 Q. Why did you have to talk to Timothy?

15 A. Because Dan told me to.

16 Q. Where had Timothy been, if you know?

17 A. He was at work at the wheelchair program.

18 Q. And at some time did he get done with the
19 wheelchair program?

20 A. Yes, right before, around maybe, I want to
21 say, about 3:30, 3:40.

22 Q. Okay.

23 A. They come about maybe 15, 20 minutes
24 before count.

25 Q. Okay. And what did you go tell Tim?

1 A. We sat on the table, and I told him, "Go
2 get high."

3 And he said, "Why?"

4 I told him, "Go get high. I'll tell you
5 later."

6 He said, "No, I'm not going to get high
7 today."

8 I said, "Just go fucking get high."

9 He looked at me, and he seen that I was,
10 like, I was kind of upset. He goes, "What's wrong
11 with you?"

12 Q. Why did you tell him to go get high? What
13 was your point in telling him to go get high?

14 A. It was probably the last time he was going
15 to get high for a while, because we were going to go
16 to Level 6.

17 "Just go get high," you know, "maybe numb
18 your feelings, whatever. I know he's your friend."
19 I told him, "Go get high."

20 He told me, "What's wrong?"

21 "Nothing. Let's go over here."

22 We went to the same stoop where me and Dan
23 read the paperwork. And he has his arm around me.
24 "What's up?"

25 I told him, "The paperwork is here."

1 And he goes, "Which one?"

2 I told him, "Just -- you ready?"

3 He goes, "Well, who?" He thought it was
4 Jerry Montoya.

5 And I kind of like shook my head, "Yeah,"
6 and I told him, "No. No, fucking Javier. Dan wants
7 you to knock him the fuck out."

8 He goes, "Why isn't Dan telling me?"

9 "You know why."

10 He goes, "Yeah, because if Dan would tell
11 me, I'll pop his fucking mouth." He goes, "Well,
12 are you down with it?"

13 I go, "Don't worry. If you're not, I'll
14 do it for you, and we'll just say you did."

15 And he goes, "No, if this is what the onda
16 needs me to do, I'll do it."

17 I told him, "All right. After count."

18 Q. Okay. Now, you said this conversation
19 took place -- and if it is, can we see somewhere on
20 Exhibit 752 where this conversation took place?

21 A. See cell 111?

22 Q. Yes.

23 A. That's my cell. Right there, directly,
24 drag your line to the corner. Right there -- no, to
25 the corner. Right there. There is a pole. And

1 then we sit right there, there is a stoop, like a
2 little seat.

3 Q. All right. And just for the record, on
4 752 I drew a circle around what would be to the left
5 of the second table there?

6 A. Yes.

7 Q. Okay. So you have the conversation there.
8 And I believe you indicated that you were willing to
9 do it for him?

10 A. Yes.

11 Q. And why were you willing to do that?

12 A. Because he's my friend and I didn't really
13 know if he had it in him either. I didn't want him
14 to get hit. And I knew that he was going to get
15 killed. And Timothy ain't -- he ain't your
16 prototype gang member.

17 Q. So what was his role again? You said to
18 knock him out?

19 A. Yeah, knock him the fuck out. Dan wanted
20 him to physically knock him out because Timothy had
21 MMA experience.

22 Q. Okay. Now, and you mentioned the other
23 two people that were going to get the shanks were
24 who?

25 A. Were Jerry Montoya and Jerry Armenta. I

1 told them that he was going to knock him out, and
2 the homies were going to go stab him; to make sure
3 he was outside of the cell before they came in.

4 Q. Now, did Mr. Martinez -- did he agree to
5 go along with it?

6 A. He said, "If this is what the onda needs
7 me to do, I'll do it."

8 Q. So how big, in relationship to Timothy
9 Martinez, is Javier Molina?

10 A. Well, Timothy is taller than him, more
11 physically fit. Javier Molina had gotten -- had put
12 on a lot of weight over the years, and he was
13 shorter.

14 Q. Okay. Now what about Jerry Armenta and
15 Jerry Montoya?

16 A. Jerry Armenta is about the same height,
17 not as physically fit as Timothy. And Jerry Montoya
18 is a smaller guy.

19 Q. Okay. Why -- I guess in the plan that
20 was -- why was it necessary to knock out Javier
21 Molina?

22 A. Because we felt that they couldn't take
23 Molina by themselves. If Molina was conscious,
24 we -- or not stunned -- we didn't believe that Jerry
25 Montoya and Jerry Armenta could take him out.

1 Q. Okay. "We" being who?

2 A. Me and Daniel Sanchez.

3 Q. Was that something you discussed?

4 A. Yes. Because I had concerns about them
5 two individuals committing the crime. And he said,
6 "No, they'll get it done."

7 Jerry Armenta was his homie. He said,
8 "No, I've been working out with him. He's ready."

9 Q. Okay. And so were you given the task to
10 tell anybody else?

11 A. I was just supposed to tell Timothy
12 Martinez.

13 Q. So then after this conversation --

14 A. With Timothy.

15 Q. -- with Timothy, what do you do?

16 A. Okay. After that conversation, the guys
17 from the phone yard: Daniel Sanchez, Jerry Armenta,
18 Montoya, Michael Hernandez, Jeffrey Madrid, and all
19 them came from the phone yard. We should be locked
20 down, go to cuenta, 4:00 count.

21 Q. And that's when you make the weapons?

22 A. That's when I begin making the weapons.

23 Q. How long does count last, again?

24 A. An hour.

25 Q. So 5:00, count is over?

1 A. Right.

2 Q. What happens at that point?

3 A. Once the doors crack, I come out and I go
4 up the stairs to the day room area, where it says
5 "common area." I go to the last cell over by Ronald
6 Sanchez. There is a railing. I jump on the
7 railing, and I pull myself up to the top tier, and I
8 go to Timothy Martinez' house.

9 And he's walking back and forth. And I
10 told him, "Are you ready?" I told him, "Don't worry
11 about it. I've been in this position. Don't worry
12 about it. You're going to be all right."

13 Q. I just put on the screen 751, which is the
14 upper level?

15 A. Right. See the lower walkway?

16 Q. Yes.

17 A. The line below is a railing, and the line
18 above it is a railing. I pulled myself up to the
19 top tier. And I told Timothy, "Are you ready?
20 Don't worry. I've been in this position before.
21 Don't worry. You're going to be all right. I'll be
22 there with you."

23 And then he told me that he had gotten
24 Javier Molina's shank. It was in the canteen bag.
25 He told me, "Take the canteen bag."

1 So I take the canteen bag. As I'm going
2 on the upper walkway, I go all the way around to the
3 top tier stairs, where it says "Up."

4 Q. Okay. Here?

5 A. I go down the stairs. Then I go back to
6 my cell 111. And when I go to my cell, Daniel
7 Sanchez and Jerry Armenta comes in right behind me.

8 Q. So now -- and Tim gave you, just so we're
9 clear, Javier Molina's shank?

10 A. Yes.

11 Q. So then you go back down to yours, which
12 is 111?

13 A. Right.

14 Q. And who is there?

15 A. Right when I go in, I set the canteen on
16 the bed. And here comes Daniel Sanchez and Jerry
17 Armenta. And he asks me, "You got them ready?"

18 I said, "Yeah."

19 Q. What was ready?

20 A. If I had made the shanks, if they were
21 ready. Daniel Sanchez asked me. I was about to put
22 them in my socks to go to their cells. And I just
23 handed them to them right there.

24 Q. Handed it --

25 A. To Jerry Armenta.

1 Q. Okay.

2 A. Then he goes -- Daniel Sanchez goes, "Did
3 you tell Plazi?" which is a nickname for Jerry
4 Montoya -- and I looked at him. I said, "No."

5 I got kind of, like, mad because he was
6 the one that was supposed to tell him.

7 He said, "Well, tell Plazi."

8 He's supposed to tell Jerry Montoya and
9 Jerry Armenta. I'm supposed to tell Timothy
10 Martinez.

11 So I go to Jerry Montoya's cell, 113. I
12 walk --

13 Q. Which is right here?

14 A. Right.

15 Q. Okay.

16 A. I walk all the way to the back of the
17 cell. He's in there. And I put my hand down my
18 pants and I pull out the fucking fierro, and tell
19 him, "It's your time."

20 Q. What's a fierro?

21 A. The shank. And he puts his hands in the
22 air. I guess he thought we were going to stab him.
23 So he puts his hands, and I told him, "It's your
24 time."

25 He goes, "Well, what's up?"

1 I told him, "The paperwork is here.
2 You're going to hit Molina, Javier."

3 And he told me, "You've seen it."

4 I told him, "I seen it."

5 "Where is it at?"

6 Q. Okay. And what did you take "where is it
7 at" to mean?

8 A. The paperwork.

9 Q. What did you say?

10 A. I told him, I said, "We already seen it,
11 Dan and I seen it. It's already next door. Don't
12 worry about it. We've seen it."

13 Q. Okay. When you said, "It's already next
14 door," what were you referring to?

15 A. I sent it back to Lazy and Lupe Urquizo.

16 Q. So then what happened?

17 A. What happened after that, I told him to
18 get into his greens, his uniform, his state-issued
19 pants and shirt.

20 Q. And why did you tell him to do that?

21 A. For the blood. There was going to be
22 blood. And so the cameras -- they were both
23 supposed to be greens so they couldn't identify
24 them.

25 Q. And so did he eventually change?

1 A. He did.

2 Q. And did you leave the shank with him?

3 A. I did.

4 Q. Where did you go after that?

5 A. I went and talked to Timothy again, I
6 think.

7 Q. And what did Timothy tell you?

8 A. He said was going to choke him out.
9 Instead of knock him out, he was going to choke him
10 out.

11 Q. Okay. Was that different from the plan?

12 A. Yes.

13 Q. Okay. So what did you do at that point?

14 A. I went and spoke to Dan Dan. I went and
15 told him, "Hey, the homie is going to choke him out.
16 And I'm going to be right there, and he's going to
17 choke him out."

18 And that's when he told, he goes, "Make
19 sure it goes right, and don't forget the dope."

20 Q. What did he mean by that?

21 A. Because we were going there to shoot up
22 Suboxone.

23 Q. Was that -- did you come up with a plan to
24 get into Molina's cell?

25 A. Yes. Through -- we usually went and did

1 drugs in there or tattooed in Molina's cell. He
2 always had his door open. So it wasn't unnatural
3 for us to be in there, especially me and Timothy.
4 It was planned that way for -- the closest people to
5 you are the right ones to kill you in the SNM.

6 Q. So what do you do?

7 A. At that point?

8 Q. Yes.

9 A. I think right before, we were sitting at
10 the bottom tables, and I go, "Are you ready," to
11 Javier Molina, Timothy Martinez. And Daniel Sanchez
12 knew what we were doing, so he goes, "Well, can I
13 go?"

14 And I looked at him, like, You know what
15 the fuck we're doing, you know. Why do you want to
16 go? You know what's going on.

17 And he's putting me in a situation where I
18 have to tell him, "No." It was an awkward
19 situation. I just looked at him. "No, we're going
20 to go."

21 So he went up to his cell, and I had the
22 Suboxone. It was in Saran Wrap. I was opening it,
23 and I couldn't get open. So Molina grabbed it out
24 of my hand and started opening it. I just looked at
25 him. "It's all right."

1 Q. The conversation, "Can I go," were you
2 guys referring to, when you say "you guys," you were
3 going to go up to do the drugs?

4 A. Yeah, he wanted to go get high with us.

5 Q. When he said, "Can I go," you took that to
6 mean he was going to go to drugs with you?

7 A. Right. He wanted to go do a shot with us.

8 Q. Because he had already mentioned that you
9 were to get the dope?

10 A. Right.

11 Q. Afterwards.

12 A. After I spoken to him about changing the
13 plan, he said, "Don't forget the dope." There is a
14 joke, like, CIC getting drugs, halfers, halfers.
15 When I was walking away, he was telling me
16 "halfers." So he knew the plan, and he was trying
17 to -- I don't know what the fuck he was doing when
18 he told me that.

19 Q. Okay.

20 A. So we go up there. And I'm opening the
21 Suboxone. I can't get it. So Molina pulls it away
22 from me. And I look at Timothy, and I'm waiting for
23 him to get him. I go like that, and he doesn't do
24 nothing, so I thought Timothy was going to wait till
25 we do the shot.

1 Q. Okay. And so you were in Molina's cell
2 now?

3 A. We're in Molina's cell.

4 Q. And who is there?

5 A. Myself, Timothy Martinez, and Javier
6 Molina.

7 Q. Okay. What happens?

8 A. I nodded to him again. And he didn't do
9 nothing. So like I said, I nodded to him like two
10 or three times, and nothing happened. So I assume
11 we're going to do the drugs. And the next thing I
12 know, I hear like a thump, thump. Timothy grabbed
13 him and started choking him out. He dropped the
14 syringe and the Suboxone. He had already opened the
15 Suboxone. At that time it was in the spoon. He
16 dropped the syringe next to the spoon.

17 Q. Who is "he"?

18 A. Javier Molina.

19 Q. Okay.

20 A. When Timothy grabbed him, he looked like
21 he was in shock, like he didn't know what the fuck
22 was going on.

23 Q. Who is "he"?

24 A. Javier Molina.

25 Q. Okay.

1 A. Then he reached his hands up to try to
2 grab Timothy Martinez' hands. And I grabbed his by
3 the wrists, and I pulled him down, and I leaned in
4 to him. And I seen him go unconscious. And I told
5 Timothy to lay him down. Timothy went to lay him
6 down. I turned. And when I went to wave in Armenta
7 and Montoya, they were already on their way in. And
8 I was telling Timothy, "Get the fuck out of the
9 room. Go."

10 And he went around, he stepped on the
11 bunk, and I think he left. When they came into the
12 room, they started stabbing him. Javier Montoya got
13 on top of him and started stabbing him on the
14 chest --

15 Q. Sorry. You said Javier got on top --

16 A. I mean Jerry Montoya. Jerry Montoya got
17 on top of him and started stabbing him in his chest.

18 Q. And was Javier standing up at this time?

19 A. No, he was laying down. He was
20 unconscious.

21 Q. Okay.

22 A. So I reach over and I grab the spoon with
23 the Suboxone and the syringe off the table, and I go
24 to leave the room. And I look back, and I see him
25 stabbing him.

1 Then the next thing I know, Molina is up,
2 standing up. So I walk back to the cell. And
3 Montoya tries to give me the shank. And I told him,
4 "Get him. Don't let him out of the fucking room."

5 Right when I turned around, Molina ran
6 right through them on the tier.

7 Q. Okay.

8 A. He started coming out of the room. And
9 Molina says, "All right, carnals. You got me."

10 And I told him, "You ain't our fucking
11 carnal."

12 And I told Jerry Montoya, "Go get him.
13 Get him."

14 And I heard Daniel Sanchez telling Creeper
15 to go get Molina, as well.

16 Q. Okay. So Javier is leaving his cell, and
17 what does he tell you?

18 A. "You got me, carnals. You already got
19 me."

20 Q. I thought he said something about "all
21 right"?

22 A. Oh, yeah, "Right, you got me, carnals."

23 I told him, "You ain't our fucking
24 carnal."

25 Q. So then where does he go?

1 A. He goes to the top tier stairs. And he
2 goes down to the front door. And Montoya and
3 Armenta proceed to stab him down at the bottom door.

4 Q. And I believe you said something about you
5 overheard Daniel Sanchez?

6 A. Yeah, he was telling Creeper to go get
7 him.

8 Q. Who is Creeper, again?

9 A. Creeper is Jerry Armenta.

10 Q. Is that the person that you said was close
11 to Daniel?

12 A. Yeah, that's Dan's homie.

13 Q. Okay. And then what happened? Were you
14 able to see what happens?

15 A. No. When the shank got thrown to the top
16 tier, I went to the shower. I picked it up. And it
17 hit the roof -- it hit the wall next the roof, and
18 hit the floor. I picked it up and went to the
19 shower and started breaking it down to get it in the
20 shower drain. The plan was that Daniel Sanchez was
21 supposed to take care of Armenta's shank. I was
22 supposed to take care of Montoya's.

23 Q. Now, so you then go into the shower?

24 A. Right. Top-tier shower.

25 Q. And is that where you stick the shank?

1 A. I do, in the shower drain.

2 Q. Is it bent?

3 A. It's bent. I bended it on my shin. I
4 started bending it on my shin. And as I put it into
5 the shower drain, I started bending it.

6 Q. Now, at some point, do you know whether or
7 not -- you said you overheard Daniel Sanchez saying
8 something to the effect of, "Go get him"?

9 A. "Get him, Creeper; Get him, Creeper."

10 Q. Do you ever know or see Daniel Sanchez
11 going and talking to anybody in the yellow pod?

12 A. When I was coming out of the shower, he
13 went to the top-tier shower and said something like,
14 "How do you like that, baby?"

15 And then, when we're locking down, someone
16 yelled back, "Fuck, yeah, Dan."

17 Q. Now, have you seen the videos in this
18 case?

19 A. Yes, I have.

20 Q. And we're going to go to, I believe, the
21 first camera view and it's Exhibit Number 11.
22 Camera 4.

23 All right. And now there's two
24 different -- this exhibit has two different cameras,
25 so this is camera 4 that we're looking at. And I

1 believe this is at the beginning. Okay. And this
2 is at 17:29:59:406. And if you can start playing
3 it. It's at the end. Can we get to the beginning?
4 Sorry.

5 All right. Now we're at 17:14:59:390.
6 Okay. Before we start that -- I know it's kind of
7 grainy -- but do you recognize anybody on the top
8 level?

9 A. Yeah, the one in the white shirt is Javier
10 Molina, and the one next to him is Timothy Martinez.

11 Q. Okay. So this would be approximately
12 5:00, almost 5:15 in the evening; is that correct?

13 A. Yes.

14 Q. Okay. And we're going to play it.

15 (Tape played.)

16 Q. Okay. If we can stop it, and it is
17 17:15:37:421 frame. There is a gentleman that came
18 into the camera. Who is that in the green on the
19 bottom?

20 A. That's Jerry Montoya in his greens. And
21 he already has the shank at that time.

22 Q. Okay. If we could keep playing it.

23 (Tape played.)

24 Q. If we could stop just briefly. All right.
25 From the last segment to this segment, we're now at

1 17:15:53:421. You saw some people coming out from
2 the lower level. Do you know who they were?

3 A. That's the nurse, Ms. Lammond. Right
4 there in front of her is Jeffrey Madrid, and I think
5 behind the CO coming down the stairs is Jerry
6 Armenta, behind the CO. Yeah, there he is.

7 Q. Okay. Pause it. I'm going to go to the
8 right hand of the screen, and we're at 17:16:05:421.
9 What is it that we're looking at?

10 A. Javier Molina asked me for the syringe.
11 I'm stepping up on the rail and giving it to him.

12 Q. So I'm marking an X on the person in the
13 middle there. Is that you?

14 A. That's me.

15 Q. And the person on the top is Javier
16 Molina?

17 A. Yes, ma'am.

18 Q. And who is it on the bottom, if you know?

19 A. Jeffrey Madrid.

20 Q. All right. Let's continue on.

21 (Tape played.)

22 Q. If you can stop.

23 All right. We're now looking at

24 17:16:20:406. Who is this person on the left hand
25 that's going up?

1 A. That's me.

2 Q. And where are you coming from?

3 A. Coming from the table. I think I was
4 talking to Dan Dan.

5 Q. Okay. And who is this next to you that's
6 going down?

7 A. That's Jerry Montoya.

8 Q. And on the top right of the picture, who
9 is it over here?

10 A. That's Mr. Molina calling me to his room.

11 Q. Okay. If we could continue on.

12 (Tape played.)

13 Q. All right. If you can stop.

14 Now we're at 17:16:55:406. At the top
15 right screen you can see part of the doorway. Do
16 you know whose doorway that is?

17 A. That's Mr. Molina's.

18 Q. And can you see that better from the other
19 camera?

20 A. Yes, you can.

21 Q. And then who is standing outside of it?

22 A. Molina.

23 Q. Where are you at this time?

24 A. At that time, I think --

25 Q. If you don't know, we can play on a little

1 bit. I don't want you to guess.

2 A. I think I'm in Timothy's room at that
3 time.

4 Q. Who is coming down the stairs?

5 A. Armenta, Jerry Armenta.

6 Q. All right. Just clear this. All right.

7 I'm going to pause it there. There is
8 somebody, and it's 17:17:42:406. There is somebody
9 here on the table. Do you know who that is?

10 A. Yes, that's me after I finished talking to
11 Timothy Martinez about choking him out, or Timothy
12 told me he was going to choke Molina instead of
13 knocking him out. That's -- I'm talking to Dan
14 about it right then.

15 Q. Who are you talking to?

16 A. Daniel Sanchez.

17 Q. Who is on the top level?

18 A. Jerry Montoya.

19 (Tape played.)

20 Q. All right. Stop it. At 17:18:23, we saw
21 somebody leave the table and go up the stairs, and
22 now they're headed towards the right of the frame.
23 Who is that?

24 A. That's going up the stairs?

25 Q. Yes.

1 A. That's me. We're going to Molina's cell;
2 myself, Molina, and Timothy Martinez.

3 Q. And there is a gentleman on the top right
4 of the picture frame. Who is that?

5 A. Molina.

6 Q. Okay. Continue on.

7 (Tape played.)

8 Q. And are you in the cell at this time?

9 A. Yes, I am.

10 Q. So I'm going to stop, and we're now at
11 17:18:59:406. We see two gentlemen on the left side
12 of the picture. Who are they?

13 A. Jerry Montoya and Jerry Armenta.

14 Q. Jerry Montoya is which one?

15 A. The one coming up the stairs.

16 Q. Okay. What's going on at this time?

17 A. They were told to sit there, I think by
18 Daniel Sanchez, to sit there until they see what's
19 going on in the room, or I call them to see. Until
20 he's knocked unconscious, then they go in.

21 Q. And what are you doing at this point in
22 time?

23 A. I think that's at the point in time where
24 I'm trying to open the Suboxone, and Molina pulls it
25 away, grabs it away from me, and starts opening it.

1 So all this is going on. I'm standing the closest
2 to the front door. Molina is in the middle, and
3 Timothy is behind him. We're standing at the desk.

4 Q. Okay. So this is about the time that
5 Molina is going to be going unconscious?

6 A. Yes, ma'am.

7 Q. All right.

8 (Tape played.)

9 Q. 17:20:02:406. And I believe that Armenta
10 and Montoya just get up and are going; is that
11 right?

12 A. Yes.

13 Q. Where are you at this point in time? Are
14 you still in the room?

15 A. I'm still in the room and waving them in
16 up against the bunk, and Molina is laying on the
17 floor, and Timothy is back behind his head.

18 Q. Okay.

19 (Tape played.)

20 Q. I'm going to stop right there.
21 17:20:28:406 and I believe somebody came out of the
22 room and is now headed towards the left side of the
23 picture frame. Who is that?

24 A. That's Timothy Martinez, and I think I'm
25 in the doorway.

1 Q. Okay.

2 A. I think that was after grabbing the
3 Suboxone and the syringe. Timothy Martinez' photo
4 album was on the bed and I grabbed it to take it
5 out.

6 Q. What kind of photo album was it?

7 A. It's a photo album with a bunch of naked
8 pictures of women.

9 (Tape played.)

10 Q. If you can stop right there, there is a
11 person on the top right -- I mean the top part of --
12 middle part of the screen. Who is that?

13 A. The top tier?

14 Q. Yes.

15 A. That's me.

16 Q. And that's 1:20:41:406. Okay.

17 (Tape played.)

18 Q. Okay. Stop. Now, there was in -- this
19 frame is 17:20:55:421, there is a person on the top
20 left part of the screen that I'm circling right now,
21 above where it says 1-A. Who is that?

22 A. That's Javier Molina.

23 Q. And did we just see him run by you?

24 A. Yes.

25 Q. Okay. And where are you?

1 A. I'm against the rail in the white shirt.

2 Q. Is this you?

3 A. Yes.

4 Q. Okay. And where are Jerry Armenta and
5 Jerry Montoya?

6 A. Jerry Armenta is in the white shirt
7 towards the right, and Jerry Montoya is right behind
8 me.

9 Q. Okay.

10 A. At this point, this is where he says, "All
11 right, carnals, you got me," when he's about to turn
12 down the rail, down the stairs.

13 Q. Go ahead.

14 (Tape played.)

15 A. Right here.

16 Q. Okay. He turned back there, and now we're
17 at 5:21:01:42. Is that you on the top?

18 A. Yes.

19 Q. Above where it says "pod"?

20 A. Yes, ma'am.

21 Q. Okay. And is this Javier Molina on the
22 bottom there?

23 A. In the white shirt?

24 Q. Yes.

25 A. Yes, ma'am.

1 Q. Okay.

2 (Tape played.)

3 Q. Okay. If you can stop at 17:21:16. And I
4 believe at this point we have -- is that Jerry
5 Armenta at the bottom?

6 A. That's Jerry Armenta in the white T-shirt,
7 and Jerry Montoya who just flipped me the shank and
8 went down the bottom tier.

9 Q. Okay. So he's now at the bottom tier, and
10 where are you headed to at this point?

11 A. To the shower, to dispose of the weapon.

12 Q. Okay. And so at this point Montoya gave
13 you the weapon already?

14 A. He threw it up. He flung it up to the top
15 tier.

16 Q. Okay. And what did Armenta do when he
17 walked by the trash can; do you know?

18 A. I think he -- well, he dropped a weapon in
19 there. It wasn't supposed to happen.

20 Q. What was supposed to happen with it?

21 A. Daniel Sanchez was supposed to take care
22 of it. I gave him a razor blade and told him how
23 the drains went, and the razor blade was to cut the
24 handle off. He seemed kind of surprised that I was
25 telling him to do that.

1 Q. Was this before?

2 A. This was before, yes. I told Armenta that
3 I was going to take care of Montoya, and Dan Dan
4 would take care of his, Armenta's; I would take care
5 of Montoya.

6 Q. Okay. So you can play it.

7 (Tape played.)

8 Q. We can stop this one. And if we go to
9 camera 5 of Exhibit Number 11.

10 All right, Mr. Rodriguez. Are you
11 familiar with this scene? On the top it says CH05,
12 which I believe is camera 5 and it says 17:15:03?

13 A. Yes.

14 Q. Okay. So this is obviously before the
15 incident?

16 A. It is.

17 Q. And who do we see in this picture?

18 A. On the bottom tier, it's myself and Daniel
19 Sanchez; and on the top tier is Javier Molina and
20 Timothy Martinez.

21 Q. Okay. And this picks up at the same --
22 just a different angle from channel 4?

23 A. Yes.

24 Q. And in this picture, can we actually see
25 Javier Molina's cell?

1 A. Yes, you can.

2 Q. And where is it?

3 A. It's to the right of him. Yes, right
4 there.

5 Q. So that's Javier Molina's cell?

6 A. Yes, ma'am.

7 Q. And I believe you said to the right of
8 him, so I'm circling now the gentleman above 1-A in
9 the picture. Is that Javier Molina?

10 A. Yes, it is.

11 Q. So at this point in time before this
12 starts, does Armenta and Montoya -- do they have
13 their shanks?

14 A. They do.

15 Q. Okay. And then I am going to -- if we can
16 play it.

17 (Tape played.)

18 Q. And the person -- just so that we're
19 clear -- at the bottom talking to you with the white
20 socks and white tennis shoes -- who is that?

21 A. That's Daniel Sanchez.

22 (Tape played.)

23 Q. And if we can fast-forward a little bit.

24 (Tape played.)

25 Q. All right. We're now at 17:16:34, who do

1 we see there at the bottom?

2 A. You see Daniel Sanchez.

3 Q. Okay.

4 A. I think right behind him is Montoya
5 sitting on the stoop. You can't see him right now,
6 but right there by his right leg.

7 Q. Okay.

8 A. Yeah, there he is, right there. He's
9 talking to him.

10 Q. Do you know what's going on at this time?

11 A. With who?

12 Q. Somebody just walked out.

13 A. That was me going to Timothy Martinez's
14 house.

15 (Tape played.)

16 Q. I'm going to pause it at 17:17:31:656.
17 And there is four gentlemen at the bottom of the
18 screen. Who are the middle two?

19 A. Me and Daniel Sanchez.

20 Q. Where did you come from?

21 A. I came from Timothy Martinez's cell.

22 Q. And what are you doing at this point in
23 time?

24 A. I'm letting Dan Dan know that Timothy is
25 going to choke him out.

1 Q. Okay. And why were you telling him that?
2 Was the plan different initially?

3 A. The plan was initially that he just said
4 to have Timothy "knock him the fuck out," which we
5 took as to physically assault him with his fists.

6 Q. Okay. And is this the point where you're
7 telling Mr. Sanchez the change in the plan?

8 A. Yeah. He tells me, "Make sure it goes
9 right and not to leave the dope."

10 Q. Okay.

11 (Tape played.)

12 Q. Okay. And it is now 17:18:21:39. I
13 believe you just got up and you're going back up?

14 A. Yes.

15 Q. All right. Now, for the rest of the time
16 that you go up and you're in Mr. Molina's cell,
17 where does Mr. Sanchez stay?

18 A. Right there with his brother.

19 Q. And there's three tables that we can see
20 in this view. The first two tables that I just made
21 two dots on -- were those the two tables in channel
22 4's views?

23 A. Yes, ma'am.

24 Q. So this is just an extended view?

25 A. Yes, ma'am.

1 Q. And you said he's there with his brother?

2 A. Right.

3 Q. Is that the person sitting down right
4 here?

5 A. Yes, it is.

6 Q. The person on the bottom right? And is
7 that the person that you said was Ronald Sanchez?

8 A. Yes, ma'am.

9 Q. All right. And then what are you doing?
10 Are you going back up?

11 A. Going back up. Timothy Martinez is going
12 to come from his cell and we're going to enter
13 Molina's cell.

14 Q. Is that Molina up on the top?

15 A. Yes, ma'am.

16 (Tape played.)

17 Q. And there is a person that just came from
18 the right-hand side of the screen and what -- we
19 stopped it now at 17:18:30. Who is that person?

20 A. That was Timothy Martinez.

21 (Tape played.)

22 Q. So does the door remain open?

23 A. It does. When you see me come out
24 earlier, it's because I'm telling the CO to leave
25 the door open.

1 (Tape played.)

2 Q. What is going on at this time?

3 A. You can see the shadows right there. The
4 CO is wiggling the door. When they want you to
5 hurry up, close the door, they start wiggling the
6 door. I come back out and I tell them to hold on.
7 Then you're going to see shadows on the white part
8 of the cell. That's when Timothy starts to choke
9 him out. Right now, I think, yeah.

10 (Tape played.)

11 Q. Stop it. It's now 17:20:04, and we now
12 see -- is that Jerry Montoya and Armenta?

13 A. Yes, ma'am.

14 Q. Okay. And it appears as if they're headed
15 where?

16 A. To Molina's cell.

17 Q. Why were they headed to Molina's cell?

18 A. Because he's unconscious and I was calling
19 them in.

20 (Tape played.)

21 Q. The cell door remains open?

22 A. Yes.

23 (Tape played.)

24 Q. Okay. Can you stop.

25 All right, at 17:20:31:390, who is at the

1 bottom of the screen?

2 A. Daniel Sanchez. And -- the bottom tier?

3 Q. Yes.

4 A. And his brother, Ron.

5 Q. And Mr. Sanchez has his back towards us?

6 A. He's looking up to the Molina cell.

7 Q. And who is it that -- who is the person in
8 the white that we can see with the pants?

9 A. On the top tier?

10 Q. Yes.

11 A. That's me.

12 Q. Okay.

13 (Tape played.)

14 Q. I believe this is 17:20:54:406, and there
15 is a person on the left-hand side. Looks like
16 something with a white shirt with something on the
17 shirt. Who is that?

18 A. That's Javier Molina.

19 Q. What did he have on his shirt?

20 A. Blood.

21 Q. And who is the person in the white to the
22 right of him?

23 A. That's me.

24 Q. Okay. And who is standing next to you, if
25 you can tell?

1 A. Jerry Montoya.

2 Q. And who is the person coming out of
3 Mr. Molina's cell?

4 A. Jerry Armenta.

5 Q. Okay. And who is the bottom person that's
6 standing up there with the white shirt on the bottom
7 level?

8 A. Daniel Sanchez.

9 Q. All right. And I believe -- go ahead.

10 (Tape played.)

11 Q. All right. Pausing. It's at 17:21:16.
12 Was that just like a second or two before when the
13 shank was flipped up to you?

14 A. Yes.

15 Q. And it would have been right here where it
16 says "pod" on the left-hand side?

17 A. It was in between the two cells on the
18 top. Do you see the two blue doors? It hit the
19 roof, the wall right above those doors, and then
20 bounced and hit the floor.

21 Q. That's when you pick it up?

22 A. That's when I pick it up.

23 Q. Okay. And I don't believe that we can see
24 anything else on this from what's happening on the
25 left-hand side; correct?

1 A. No.

2 Q. Okay. Now, after you went to the shower,
3 did you -- and you put the shank in there, what did
4 you do after that?

5 A. I came out and went to lock myself in, go
6 to my cell for lockdown.

7 Q. Now, we saw Daniel Sanchez in front of the
8 camera. Was that part of the plan? Or what was the
9 plan?

10 A. I wasn't in on that part of the plan. I
11 didn't initially take no mind to it or attention to
12 it until a lot of the carnals started pointing it
13 out to me.

14 Q. Okay. Now, at some point do correctional
15 officers respond?

16 A. They do.

17 Q. Police respond?

18 A. They come in and I go to lockdown.
19 They're saying that there is a spot of blood outside
20 my house. So I got a hand sanitizer with water and
21 threw it out to dilute the blood. And I covered my
22 window. I covered my window. I started arguing
23 with the CO when he started trying to take pictures
24 of me. I covered my window with a towel. And I ate
25 some food. I had the syringe. I was trying to wrap

1 up the syringe to keister it.

2 Q. What do you mean by "keister it"?

3 A. I was going to put it in my rectum with
4 Saran Wrap. And then I bent down, I don't remember
5 why, and I seen that I had blood on my greens.

6 Q. What are your greens?

7 A. My state-issue pants.

8 Q. Okay.

9 A. On my right shin, I had blood from bending
10 the weapon while I was in the shower. So when I
11 took off my pants, I seen I had Molina's shank
12 still. Because when I got it from Timothy, I put it
13 on my bunk, and I went to the canteen. And I pulled
14 the shank out and put it in my sock.

15 So when I seen that, I took the handle off
16 it, and I put it on the corner of the desk. And I
17 went to bend it. I bent it in half. I went to
18 Saran Wrap it. And I had a lot of -- what do you
19 call it? I wasn't calm at the time. I was real
20 anxious, going -- trying to move fast.

21 Q. What did you do with the pants?

22 A. I threw them in my sink, with extra hand
23 sanitizer and toothpaste and started washing them.
24 And I got the Saran Wrap to try to wrap up the
25 weapon. It was bent in, like, a U, about maybe two

1 and a half inches long, bent.

2 Q. And whose weapon was that?

3 A. Javier Molina's.

4 THE COURT: Ms. Armijo, would this be a
5 good time for us to take our lunch break?

6 MS. ARMIJO: Sure.

7 THE COURT: All right. We'll be in recess
8 for about an hour. All rise.

9 (The jury left the courtroom.)

10 THE COURT: All right. Everyone be
11 seated.

12 I spent a lot of time watching Mr. Perez
13 since Ms. Fox-Young was up here. As I noted, Mr.
14 Perez is closest to me as far as the defendants.
15 And he sits on the corner of the chair that's right
16 in front of my court reporter, so I'm able to
17 observe a lot of his body. I can't see his feet but
18 I can see his hands and things like that. So I am
19 able to watch him.

20 As far as my notes indicate, he didn't
21 cough at any time since Ms. Fox-Young was up here.
22 Several times as the witness was testifying, he
23 would turn his head to the witness and observe the
24 witness. Then when it was appropriate to be looking
25 at a screen, he was looking at the screen. So he

1 looked very engaged to me.

2 I counted three times that he reached over
3 and got water, which required him to then adjust the
4 mask, and he did that.

5 He would touch himself, as people do, you
6 know. I could watch his fingers moving. He'd pat
7 his belly from time to time; and so he moved his
8 hands frequently. He adjusted himself in the seat I
9 counted at least three times, and he adjusted the
10 mask three or four times.

11 He turned his head many times during that
12 time, and he turned his head at times that were
13 appropriate to be looking at the screen. He looked
14 down. At one time I actually saw him close his eyes
15 rather hard, so it was like a squint. I saw him do
16 that.

17 He pulled himself up to the desk at one
18 point. And instead of leaning back, as he does most
19 of the time, he leaned on the table. He rubbed his
20 forehead, adjusted his glasses, and then leaned
21 back.

22 I saw Mr. Villa reach over and touch him
23 twice, and immediately he responded and turned to
24 him. He put his hands on his thighs, patted those
25 at times. Even when not moving, he would often be

1 moving his fingers; so I could see his hands.

2 I did not see counsel at any time try to
3 discuss with Mr. Perez any of the evidence or any of
4 the -- anything that was going on.

5 He rubbed the back of his head at one time
6 and touched his hair. He adjusted his glasses. He
7 adjusted the mask at times. He never put his chin
8 on his chest, indicating that he was sleeping that
9 way. He never put his head back like he had fallen
10 asleep and was waking himself up.

11 He resumed putting -- pulling himself up.
12 He would adjust in his chair. He moved his fingers
13 on his shirt and on his thighs. Even when his head
14 was still, I could see his fingers moving. And he
15 pulled his mask up several times to adjust and clean
16 his nose. I indicated he had patted his tummy when
17 he was sitting there, like that.

18 So it seems to me -- and I hope you'll
19 agree, Mr. Villa; you're at the podium -- that he
20 had a good morning and that he was awake and alert
21 and seemed to be involved. He closed his eyes.
22 That doesn't necessarily indicate to me that he's
23 asleep. So I think it may be a wrong inference from
24 that, because when y'all reach over and touch him,
25 he immediately responds. He may just close his eyes

1 at some point, but I'm not seeing that he's asleep.

2 MR. VILLA: Well, Your Honor, I agree with
3 the Court's recitation of movements. The two times
4 I reached over to touch him was because his eyes had
5 been closed long enough that it appeared to me he
6 was falling asleep. I guess there's different
7 definitions of sleep. But since we came to the
8 podium, I saw four times in between my note-taking
9 that I was concerned Mr. Perez was at least fighting
10 off sleep. And I agree that oftentimes when he
11 fought that sleep off, he would move, he would
12 adjust his chair, he would adjust his mask, he would
13 drink water, he would do things like that.

14 There was a specific point in time during
15 Mr. Rodriguez' testimony after we came to the bench
16 last time in which Ms. Fox-Young wrote a question.
17 I'm not going to read it, because I think it's
18 privileged work product. But the question was seven
19 words, a fairly simple question. Mr. Perez looked
20 at it -- that we had about something that Mr.
21 Rodriguez was testifying to. Mr. Perez looked at it
22 for what I thought was a lot longer time than would
23 normally take him to read it. I then repeated the
24 question to him verbally, and in my opinion, it took
25 him a lot longer to understand the question. He did

1 eventually answer it.

2 And so and Ms. Fox-Young and I are both
3 concerned. I recognize that there are a lot of
4 people coughing, I recognize there are a lot of
5 people getting sick. I don't think anybody is as
6 sick as Mr. Perez. I don't think anybody has the
7 underlying medical issues that Mr. Perez has. I
8 think that the fact that he was struggling to stay
9 awake during the most critical part of the testimony
10 against him in this case is telling. He was
11 completely alert and active the entire week last
12 week. There was never a moment, even though some of
13 them were dull, that I noticed him fighting sleep or
14 having any sort of trouble. I have to believe it's
15 related to the illness he's suffering.

16 I learned today that he finally got his
17 antibiotics today. He tells me he's still having a
18 lot of symptoms, a serious headache. Perhaps he's
19 closing his eyes to help with the headache. But in
20 any case, I think it is interfering with his ability
21 to assist counsel. And I don't think that the
22 standard is, under due process, whether the
23 defendant is, you know, only able to assist some of
24 the time or parts of the time. I think he has to be
25 able to assist counsel the entire time, and I don't

1 think he's able to do that.

2 And given his illness, I think that, you
3 know, we would renew our motion for a mistrial. If
4 the Court doesn't grant that, I think the
5 appropriate remedy is a continuance until Mr. Perez
6 is healthy; or severance of Mr. Perez' case until
7 he's healthy enough to stand trial.

8 THE COURT: I'm not adverse to it. You'll
9 have to talk to the marshals. But if he responds to
10 caffeine, I certainly don't mind him having a Coke
11 or, you know, a 5-hour Energy drink, or whatever he
12 has, if it's all right with the marshals. So I
13 certainly don't mind him having that in the
14 courtroom.

15 MR. VILLA: The cup you see in front of
16 him is tea with caffeine. He had some tea earlier
17 that was more for, we were hoping, for congestion,
18 and they did allow him to have some tea with
19 caffeine. I think it may have improved a little bit
20 from before when we came to the bench. But in my
21 opinion, he was still fighting sleep.

22 THE COURT: All right. We'll monitor it.
23 I'll keep an eye on Mr. Perez. We certainly want
24 him to be able to assist you when you want his
25 assistance, so we'll continue to monitor it.

1 MR. VILLA: And would the Court, for the
2 record, rule on our motions?

3 THE COURT: I deny the motion for a
4 mistrial. We'll just continue to monitor. So I'm
5 not going to sever at the present time or continue
6 the trial. I'll keep an eye on him.

7 MR. LOWRY: May I --

8 THE COURT: What does it relate to?

9 MR. LOWRY: We haven't done this yet, but
10 the marshal is taking the witness down to the
11 holding cell. And unfortunately, some of the
12 witnesses are commingling and we think possibly
13 sharing testimonial information.

14 Can we get a formal admonishment from the
15 witnesses before they leave not to discuss the case?

16 THE COURT: Fine. If I don't do it,
17 remind me.

18 Do you want to put anything on the record,
19 Deputy? Are they commingling down there?

20 MR. MICKENDROW: Deputy Mickendrow, just
21 for the record. We are keeping all the witnesses
22 separate. They are within shouting distance. But
23 we are having deputies monitor the conversations
24 that are going on. None of it is regarding the
25 trial. And all of it is mainly just general talk

1 about how are you doing, and how's things been
2 going.

3 In addition, I don't believe defense
4 counsel knows this, but the Marshal Service has been
5 providing all of the defendants at lunch time
6 caffeinated sodas in order to assist keeping them
7 awake during the trial. So the Marshal Service has
8 been doing that.

9 THE COURT: Thank you, Deputy. Appreciate
10 it.

11 All right. See y'all in about an hour.
12 (Lunch recess.)

13 THE COURT: All right. We'll go on the
14 record. Is there anything we need to discuss?

15 Do I need to know a little bit more about
16 this bad act? Maybe I ought to hear from -- I
17 thought I had Ms. Duncan before I started talking.

18 What is it about this bad act that you're
19 concerned about, Mr. Lowry?

20 MR. LOWRY: Your Honor, the bad act is a
21 1989 murder conviction.

22 THE COURT: And this is one where, at the
23 time that I got the information, neither the
24 Government nor I had enough to make a decision?
25 Isn't that my memory on this one?

1 MR. LOWRY: I think that is, Your Honor.
2 And frankly, let me put it like this: We've
3 looked -- we've gotten the complete trial
4 transcript. We spoke to the trial attorney who
5 handled that. And we've actually spoken to the
6 trial attorney, the appellate attorney. The issue
7 with the SNM gang or any gang affiliation or gang
8 membership never came up during that trial.

9 THE COURT: Let me do this: Let me have
10 Ms. Armijo make a proffer. Have you heard this?

11 MR. LOWRY: No, we haven't.

12 THE COURT: Let me have her make a
13 proffer, and then I'll let you see what you think of
14 it.

15 MS. ARMIJO: Your Honor, I disclosed on
16 February 3, on Saturday afternoon, I emailed this to
17 defense counsel.

18 THE COURT: Is this a letter or email?

19 MS. ARMIJO: This is a 302. I first
20 emailed in the afternoon the draft 302 by Nancy
21 Stemo and then that evening --

22 THE COURT: This is Agent Stemo talking to
23 Mr. Rodriguez?

24 MS. ARMIJO: She was noting down anything
25 new. It was during trial prep, when we were going

1 over everything; anything that we felt had not been
2 previously gotten into more detail. She authored a
3 three-page 302 for us to send to the defense. When
4 she sent me a couple hours later a draft, I e-mailed
5 the draft out that afternoon, and Saturday evening,
6 I want to say after 10:00 p.m. I emailed to defense
7 counsel the finalized version, along with other 302s
8 from that day.

9 THE COURT: So what's Mr. Rodriguez going
10 to say that ties this '89 murder with the SNM?

11 MS. ARMIJO: Mr. Rodriguez would say that
12 Mr. Baca told him about it; that it was in reference
13 to -- I'm looking at the wrong sheet. I'm sorry.

14 THE COURT: You don't have an extra copy
15 of this 302, do you?

16 MS. ARMIJO: No. I can get you a copy.

17 THE COURT: Go ahead and read me what you
18 have.

19 MS. ARMIJO: I believe Special Agent Acee
20 may have one. He says that when he was housed with
21 Mr. Baca, Baca shows Mr. Rodriguez a plan for the
22 SNM. That's what we've already talked about. Let's
23 see, "Baca told Rodriguez about the murder of Luis
24 Velasquez. Baca killed Velasquez in front of the
25 PNM Main warden, and told the warden he was not

1 going anywhere till Velasquez was dead. Rodriguez
2 heard different versions of the story and believed
3 that the story Baca told him was different as to how
4 it actually occurred. Baca and Rodriguez became
5 close to each other, though, in this time frame."

6 So in essence, Mr. Baca was bragging to
7 Mr. Rodriguez about the murder, and the important
8 part about it --

9 MR. LOWRY: Your Honor.

10 THE COURT: Why don't you keep him out for
11 just a second. Okay?

12 Let me do this: Why don't you go ahead
13 and bring him in. Y'all go ahead and bring him in.

14 Why don't I read this. I'll read it, and
15 then I'll give you a chance to come up before we get
16 into it, to approach before we get --

17 MR. LOWRY: Your Honor, I will say this.
18 Everything on that piece of paper is everything I
19 know.

20 THE COURT: Okay.

21 MR. LOWRY: There is nothing on that piece
22 of paper that related to the SNM.

23 THE COURT: Okay. Where exactly are you
24 reading, Ms. Armijo?

25 MS. ARMIJO: The second paragraph.

1 THE COURT: Is that everything that you
2 know is in that second paragraph, as well?

3 MS. ARMIJO: Well, no. I know that what
4 he would say --

5 THE COURT: Well, don't --

6 MS. ARMIJO: -- the importance of what is
7 said.

8 THE COURT: Okay.

9 MR. BECK: Right. And we will have
10 testimony from another cooperator about this
11 incident and how it is related to the SNM and
12 increased Mr. Baca's --

13 MR. LOWRY: Your Honor, can we not have
14 this conversation with the witness in the room?

15 THE COURT: All right. Let's hold off on
16 it.

17 MS. ARMIJO: One more thing -- I'm not
18 going to get into contents, but this is discussed in
19 a phone conversation --

20 MR. LOWRY: Can we not have the
21 conversation with the witness here?

22 THE COURT: Let's not. All right. Is
23 there anything else we can talk about, other than
24 this issue?

25 MS. ARMIJO: No, Your Honor. I think that

1 before the next break, we'll ask to approach because
2 we will be bringing it up.

3 THE COURT: All right. How about from the
4 defendants? Anything we need to discuss?

5 MR. LOWRY: No.

6 THE COURT: All rise.

7 (The jury entered the courtroom.)

8 THE COURT: All right. Everyone be
9 seated.

10 Mr. Rodriguez. I'll remind you you're
11 still under oath.

12 THE WITNESS: Yes, sir.

13 THE COURT: Ms. Armijo, if you wish to
14 continue your direct examination of Mr. Rodriguez,
15 you may do so at this time.

16 MS. ARMIJO: Thank you, Your Honor.

17 THE COURT: Ms. Armijo.

18 BY MS. ARMIJO:

19 Q. Now, I believe when we left off, we were
20 talking about when you were -- after the homicide
21 when you were in your cell, whatever became of the
22 shank that Timothy Martinez gave you that he
23 indicated was Javier Molina's?

24 A. I took the handle off it, and then I put
25 it up on the desk, right in the middle; I bent it

1 into -- where both the back end and the front were
2 touching. And I went to put Saran Wrap around it,
3 and I couldn't get the Saran Wrap. And I ended up
4 keistering it and taking it with me to the PNM Level
5 6. And the Saran Wrap that is in the toilet is the
6 Saran Wrap that I attempted to wrap it with.

7 Q. So there is some Saran Wrap that is
8 actually in a picture?

9 A. Yes.

10 Q. That was your cell?

11 A. Yes, ma'am.

12 Q. Now, when did you go back up to PNM?

13 A. The next day, emergency transport.

14 Q. Now, prior to going up to PNM in that
15 evening, was there investigations going on with
16 Corrections, maybe STIU interviews, or with the New
17 Mexico State Police?

18 A. Yes, there was.

19 Q. And were you actually -- did they attempt
20 to interview you?

21 A. I think they did come interview me, the
22 State Police did. I was one of the first
23 individuals taken out of the pod and put into the
24 segregation. And then they moved me to -- I'm not
25 familiar with the grounds there, but it was either

1 2-A or 2-B. And I lived with Rudy Perez, Jeffrey
2 Madrid, Jerry Montoya, and I think Michael
3 Hernandez. And I lived right above Rudy Perez.

4 Q. Okay. And when was this?

5 A. This was that night, the night of the
6 incident.

7 Q. Okay. So we're talking, like, March 7,
8 maybe into the --

9 A. Maybe into the morning.

10 Q. Into the morning hours of March 8?

11 A. Yes.

12 Q. And were they taking you all out, one at a
13 time, to interview?

14 A. Yes. I had called Rudy in the vent,
15 complaining that it was cold. And he had started
16 laughing, that he brought his jacket, his sweats,
17 his radio, and that it wasn't his first rodeo. And
18 I laughed at him. I told him, "Well, you know
19 they're going to take all that shit from you."

20 Q. Now, I'm going to hold you up. You said
21 you called him through the vents?

22 A. Right.

23 Q. Explain to the jury what that means.

24 A. Okay. Each cell has an air duct. It's a
25 vent that is -- there's two cells on the top, two

1 cells on the bottom. And in those cells there's air
2 vents next to the toilet, and you could see right
3 across into the next cell, and you can speak to the
4 individuals at the bottom tier. And each four cells
5 could hear you when you talk. So you just call out
6 the name and they'll answer, and you begin having a
7 conversation.

8 Q. All right. I'm going to put up Exhibit
9 Number --

10 MS. JACKS: Your Honor, if that's the end
11 of that testimony, we'd ask that it be limited.

12 MS. ARMIJO: I'm going to continue on.
13 But we can certainly start.

14 MS. JACKS: Okay.

15 BY MS. ARMIJO:

16 Q. All right. Now, I'm looking at Exhibit
17 Number 751 and I'm just using this as an example.
18 There's cells 107 and 108?

19 A. Right.

20 Q. And if I were to put up on top of that --

21 A. That would be the bottom tier right there.
22 That would be the top tier.

23 Q. Okay. I'm putting up 752, and I'm
24 pointing to rooms 115 and 116.

25 A. Right.

1 Q. And then if we were to put that on top,
2 Exhibit Number 751, we would have cells 107 and 108?

3 A. Yes, those four cells could speak to each
4 other through the vent.

5 Q. Okay. And so, now, you weren't in this
6 unit; correct?

7 A. No.

8 Q. So you said -- who did you have a
9 conversation with?

10 A. With Rudy Perez.

11 Q. And you said you were -- something about a
12 rodeo. Can you explain that?

13 A. When I was complaining it was cold,
14 because I was in a paper suit, and he had told me
15 that he had brought his sweats, his jacket, his
16 radio, his beanie, and stuff like that. I told him,
17 "You know they're going to take that shit from you."

18 He said, "No, they're not going to take it
19 from me."

20 I said, "They're going to take it from
21 you."

22 And when they pulled him out for
23 interview, I seen -- that's the first time I seen
24 the walker with the streamers on it. I just shook
25 my head, because I seen him walk out of his cell,

1 knowing the bar was missing with the streamers
2 hanging on the side. I figured STIU was going to
3 see it.

4 Q. I guess that was my question. Why were
5 you concerned?

6 A. Because the bar was missing, and I took
7 the bar from the walker.

8 Q. When you took the bar from the walker, did
9 you put, as you call them, the streamers on there?

10 A. No, I did not.

11 Q. Okay. And were you afraid that the papers
12 would call attention to it?

13 A. The STIU -- yeah, that the pieces of sheet
14 would call attention to it.

15 Q. And is that -- was it pieces of sheet? Is
16 that what you're referring to as streamers?

17 A. I don't know what it is. It looks like
18 pieces of sheet from the picture.

19 Q. Okay. But it's something white?

20 A. Yes.

21 Q. All right. And did you have a
22 conversation with Mr. Perez when he returned?

23 A. When he returned, I had a conversation
24 with him because he came back in a paper suit. And
25 I was laughing at him. And he goes, "Is everything

1 all good?"

2 I said, "Yeah. Why?"

3 He goes, "Well, I mean, is everything all
4 good with those things?"

5 I said, "Yeah, it's all good. Don't worry
6 about it."

7 He goes, "Well, Dan" --

8 I said, "Don't worry about it."

9 I didn't know who was in the conjoining
10 cells next to him, and I -- so I didn't want him to
11 say nothing. I told him, "Just don't worry about
12 it. Everything is all good."

13 He goes, "Okay. I just want to make
14 sure."

15 I told him, "Don't worry about it. It's
16 all good."

17 He was concerned that -- I can't say what
18 he was concerned with. I can just assume what he
19 was concerned with.

20 Q. Okay. So he was trying to talk to you --

21 A. About the weapons.

22 Q. And then you didn't want him to say
23 anything else?

24 A. No.

25 Q. Were you aware of who else would have been

1 next to you in the vents that could have heard?

2 A. We didn't know who was in that unit.

3 Q. But you did know that Mr. Perez was -- was
4 he next to you or below you?

5 A. He was right below me.

6 Q. So could you see him?

7 A. No, I can't see him. I can only see
8 across from -- I was on the top tier, he was on the
9 bottom tier.

10 Q. Okay. And how did you know he left with
11 the walker?

12 A. I seen him. I just came to my door and I
13 seen him coming out.

14 Q. Okay. So when they came to go get him,
15 you could look out your window --

16 A. There is a window.

17 Q. -- and see him?

18 A. I believe there is pictures of the cells
19 where you could see the windows in the discovery.

20 Q. Okay. Now, before we move on, I want to
21 ask you just a couple of things. Did you hear --
22 when you returned the paperwork to Carlos Herrera,
23 was that -- just so that we're clear -- before or
24 after the murder?

25 A. Before.

1 Q. And was there any --

2 MS. JACKS: Your Honor, I'm sorry, can we
3 have the limiting instruction regarding the
4 statements of Rudy Perez that counsel just elicited?

5 THE COURT: All right. These statements
6 that Ms. Armijo is getting that Mr. Rodriguez is
7 testifying Mr. Perez said -- these can only be used
8 against Mr. Perez. They cannot be used against any
9 other person.

10 All right, Ms. Armijo.

11 BY MS. ARMIJO:

12 Q. All right. Now, when you returned the
13 paperwork, was there anybody with you?

14 A. I recall -- I think I recall Dan coming to
15 the door with me. And I'm thinking that when I slid
16 it under -- I think a few of us had contact visits
17 coming up. And he said something about Wednesday.
18 And Carlitos, Lazy, Carlos Herrera said, "Just get
19 it done."

20 Q. And what did you take him to mean by,
21 "Just get it done"?

22 A. I think he thought we were trying to wait,
23 because there was drugs supposed to be hit on
24 Wednesday. I thought that he was thinking that we
25 were going to wait till Wednesday, and then hit

1 Molina. I told him, "We'll talk about it. Just
2 stay on your side. We'll handle it over here."

3 Q. Okay. And so what did you take, "Just get
4 it done" to mean?

5 A. We were all concerned that if it didn't
6 get done, with the paperwork going around, that he
7 was going to get kited out; someone was going to
8 drop a kite and inform, and then the hit wouldn't
9 have been able to take place.

10 Q. What do you mean by "kited out"?

11 A. When the wrong people come across
12 information, they'll go give it to STIU, or give it
13 to a CO, that someone's life is in danger, and
14 they'll move that individual.

15 Q. Now, why did you choose to give the
16 paperwork back to Herrera?

17 A. Well, I just figured to give it back to
18 Lupe Urquizo, because his paperwork was in there.
19 If I was to get caught with his paperwork, that's
20 instant report. If you have anyone else's legal
21 work, you get a misconduct report for that. And it
22 was his, so I gave it back to him.

23 Q. Do you know -- are you aware of whether or
24 not Carlos Herrera -- what his position within the
25 pod was, yellow pod?

1 A. In his pod?

2 Q. Yes.

3 A. Along with Alex Munoz, him and Alex Munoz
4 had the keys for that pod. They were the
5 key-holders.

6 Q. In your experience with SNM, who is it
7 that does the actual stabbings as far as within the
8 structure of SNM?

9 A. Sometimes -- it depends on the
10 individuals. But more than likely, it's the
11 soldiers. You've got a few leaders that are willing
12 to take it on and lead by example. That's very few.
13 Most of them are trying to use you so they don't get
14 locked up as long as you will.

15 Q. Now, you indicated that you were sent back
16 to the North; is that right?

17 A. PNM North, Level 6.

18 Q. Who were you sent back with?

19 A. I was on transport with Mauricio Varela,
20 and there was a trailing transport with Daniel
21 Sanchez in it.

22 Q. And that was on what day; do you recall?

23 A. The next day.

24 Q. So would that be the 8th, on Saturday?

25 A. It would be on the 8th.

1 Q. And where were you housed?

2 A. I was housed in 3-A R pod.

3 Q. Which unit? The North?

4 A. North facility.

5 Q. So that would be Level 6?

6 A. Yes.

7 Q. At some point were you charged in the
8 state case?

9 A. I was.

10 Q. What were you charged with?

11 A. With tampering with evidence, conspiracy
12 to tamper with evidence, and possession of a weapon.

13 Q. Okay. And which weapon was that?

14 A. The weapon from the shower drain.

15 Q. While we're speaking of weapons, did you
16 have actually a shank on you somewhere on March 7?

17 A. Yes, I had one prior to the Molina one.
18 And prior to the ones I made, I had an icepick.

19 Q. And where was that?

20 A. It was in the sole of my shoe, shoved in
21 the foam. Not underneath the sole, but in the back.

22 Q. I'm going to show you on the Elmo what's
23 in evidence as Government's Exhibit 746. Can you
24 see that?

25 A. Right, yes.

1 Q. Does that appear to be your shoe?

2 A. Doesn't look like it was before, but yeah,
3 that's it.

4 Q. All right. And where did you have it?

5 A. In the back there is like a gray tab. You
6 see the back of the sole? The complete back of the
7 heel. It looks like they chopped the heel off, but,
8 right.

9 Q. All right.

10 A. Yeah. Lift it up. See the gray tab right
11 there, where the holes are?

12 Q. Right here?

13 A. Those holes are from putting the weapon in
14 there.

15 Q. All right. So --

16 A. You push down on it, it's like a soft
17 foam, and it goes down through the heel.

18 Q. All right. Did you ever take it out on
19 the 7th?

20 A. No.

21 Q. Where did you stay when you were pending
22 your state case?

23 A. They took me and isolated me from all SNM
24 members to the South facility.

25 Q. Okay. And how long were you there?

1 A. I think I was isolated for around nine
2 months, nine and a half months.

3 Q. Where did you go from there?

4 A. I was going back and forth to court.
5 Eventually, they moved me to the PNM North facility,
6 X pod. And then they moved me -- we had all the SNM
7 in 3-A. I was in 3-B. And then about a month
8 later, they moved me back with all the SNM members.

9 Q. And were you up there up until your arrest
10 in this case?

11 A. Yes, I was.

12 Q. And were your state charges dismissed?

13 A. They were.

14 Q. And do you know why that is?

15 A. Because the feds picked them up.

16 Q. Now, when you were up there, did you -- up
17 at PNM, were you ever housed at some point with
18 Anthony Baca again?

19 A. Yes. When they brought him back from
20 Colorado, he was housed in the cell right below me,
21 in Q pod.

22 Q. Okay. Again, like that configuration that
23 we saw before with Mr. Perez?

24 A. It's a little different in the North.
25 There's six cells on top of six cells, and it's one

1 front view. So -- but the same thing. You can talk
2 to each other through the vents, only the vents are
3 a little higher on the wall.

4 Q. You can still hear each other?

5 A. Still hear each other. You just can't see
6 each other like you can in Southern.

7 Q. And would you also do any rec time with
8 Mr. Baca?

9 A. Yes.

10 Q. Did you continue to have conversations
11 with him?

12 A. I did.

13 Q. Now, in reference to -- did you have a
14 conversation with Mr. Baca about your pending
15 charges?

16 A. I did.

17 Q. And when was it that you had a
18 conversation? Let me back up. Was he there the
19 entire time you were at North, or was there a point
20 in time when he was moved back?

21 A. There was a point in time when he was
22 moved back. I think it was around October, before
23 right there. Let me see. Early October, right
24 before you guys picked us up on the federal case.

25 Q. And the federal case -- if you were picked

1 up on December 3 of 2015, so this would be October
2 of 2015?

3 A. Had to be early October.

4 MR. LOWRY: Your Honor, can we approach
5 the bench?

6 THE COURT: You may.

7 (The following proceedings were held at
8 the bench.)

9 MR. LOWRY: Your Honor, I believe she's
10 going to solicit testimony about the threats that
11 were made on Mr. Armenta's family during the
12 pendency of the state case. I want to just argue
13 that this is vastly more prejudicial than probative
14 of anything. They have more than enough
15 racketeering -- alleged racketeering activity, and
16 that this is exceedingly prejudicial, especially for
17 a jury who has been told that they need to be
18 anonymous, and now they're not.

19 I'm just worried about the impact of this
20 type of evidence on this jury. We've already seen
21 them crying in the courtroom when they got selected.
22 They expressed during voir dire that they were
23 scared that their names were shared. I think it's
24 over the top in the context of this case, given the
25 evidence that they already have.

1 MS. ARMIJO: That is a bad act that was
2 noticed and approved by the Court.

3 THE COURT: Yeah, I think I've already
4 made the decision.

5 You know, as far as crying, I didn't see
6 anybody cry. I did see, you know, jurors looking
7 kind of sad. But that may be because they were
8 selected for an eight-week trial. I think this is a
9 good bunch. I think we weeded out people that we
10 thought were afraid to sit on this jury. This bunch
11 really impresses me. They just clock in, clock out.
12 I've had juries of 12 that aren't as good as this
13 group. This is an outstanding bunch of Americans.
14 I think we made this call. And I'll stick with it.
15 Overruled.

16 MS. DUNCAN: We have a standing objection
17 to this line of questioning by Mr. Armenta.

18 MS. BHALLA: Your Honor, in regards to --
19 I just wanted to -- for Mr. Herrera, we also would
20 object to this line of questioning in terms of bad
21 acts. I think that a limiting instruction in this
22 case isn't enough to keep this from being
23 prejudicial to Mr. Herrera. So we object to it, as
24 well. If the Court is not inclined to grant the
25 objection, then I would ask that a limiting

1 instruction be given.

2 THE COURT: Okay, well --

3 MR. VILLA: On behalf of Mr. Perez, I join
4 in Ms. Bhalla's objection.

5 MS. JACKS: And we join on behalf of Mr.
6 Sanchez. And I don't think a limiting instruction
7 is sufficient to cure the damage caused.

8 THE COURT: I understand the objections.
9 I'll allow the testimony.

10 (The following proceedings were held in
11 open court.)

12 THE COURT: All right, Ms. Armijo.

13 BY MS. ARMIJO:

14 Q. Mr. Rodriguez, did you have a conversation
15 with Mr. Baca about your pending case?

16 A. Yes.

17 Q. And just so we're clear, the pending case
18 was in reference to which incident?

19 A. The Javier Molina murder.

20 Q. What was your conversation with Mr. Baca
21 about?

22 A. It was about that I suspected Jerry
23 Montoya and Armenta -- well, I knew Armenta was
24 ratting, but Jerry Armenta was working with the
25 STIU. And went on to that my lawyer was going to

1 get my charges amended. They were about to amend me
2 for first-degree murder. So we were talking about
3 that.

4 And then he brought up, if you don't want
5 to just go on and do it, so he wanted to ask me if
6 it was okay if he had someone holler at Armenta's
7 family. And I told him, "I don't care. You know,
8 I've got the information right there, if you want
9 it." And I ended up giving him that.

10 Q. Okay. Now, when you stay "holler at
11 Armenta's family," what did you take that to mean?

12 A. Threaten his family. If he testified,
13 something was going to happen to his family.

14 Q. Okay. And how did you have that
15 information?

16 A. In the state case, there is no such thing
17 as redacted. I had the state discovery, which had
18 everyone's escape fliers, has all their personal
19 information, their mercy contacts, their charges,
20 everything that's on there; their mother and
21 father's addresses, everything.

22 Q. And so what did you do with that
23 information?

24 A. I wrote it down on a piece of paper and I
25 fished it down to the bottom tier from the top tier

1 to him.

2 Q. And did he tell you anything in reference
3 to that?

4 A. To fishing it to him later?

5 Q. Yes. I mean, after you gave it to him --

6 A. I didn't ask him another thing about it.
7 I just -- he wanted to know if he could get
8 involved. I said, "Yeah."

9 Q. Okay. Did you talk to him about your
10 state charges? Did he tell you anything in
11 reference to them?

12 A. He was disappointed that myself, Timothy
13 Martinez, and Jerry Montoya were charged, because
14 Javier Molina was supposed to be murdered far before
15 I got down there. So he was disappointed that good
16 brothers like us got caught up in something that
17 should have been done before we got down there.

18 MS. JACKS: Your Honor, may we request a
19 limiting instruction, please?

20 THE COURT: Yes. These comments that Mr.
21 Rodriguez is testifying about that Mr. Baca made to
22 him cannot be used against any of the other
23 defendants. So you can only consider those as to
24 Mr. Baca.

25 Ms. Armijo.

1 BY MS. ARMIJO:

2 Q. Now, did you have a conversation with Mr.
3 Baca in reference to anything regarding Gregg
4 Marcantel or Dwayne Santistevan?

5 A. In the same yard we conversated about
6 that; that they were having a banquet or a barbecue,
7 and he was going to have someone follow him home.
8 And I told him, "I don't want no part of that."

9 I already told the carnals before he got
10 back that I don't want no part of the Santistevan
11 and Marcantel case, the hits on them.

12 Q. Okay. So when he started talking to you
13 about it, what did you say?

14 A. "I don't want nothing to do with that." I
15 just told him, "I already told the carnals that were
16 involved in that shit, I don't want nothing to do
17 with it."

18 MS. JACKS: Again, Your Honor, we'd
19 request a limiting instruction.

20 THE COURT: Same instruction. You can
21 only consider this evidence about what Mr. Baca said
22 to Mr. Rodriguez only in connection with Mr. Baca's
23 charges, not as to the other three defendants'
24 charges.

25

1 BY MS. ARMIJO:

2 Q. And who specifically, if you can recall,
3 was it that he was talking about having followed?

4 Who --

5 A. I didn't ask. And I hope -- I didn't want
6 to hear it. I shut it down right away because I
7 don't want nothing to -- I knew someone was going to
8 end up telling on that case. And the more people he
9 talked to about it, the more he became suspect as
10 telling. And I always try to keep my name out of
11 the suspect circle.

12 Q. Now, in reference to the conversation that
13 you had with him about Jerry Armenta, did you leave
14 that -- were you worried? Was there anything that
15 he told you as far as what he would do?

16 A. There was nothing that he told me he would
17 do. He was going to have someone reach out to them.

18 And then we also spoke about the case,
19 about him being -- he was insisting on letting me
20 know that he knew about the paperwork; that he kept
21 on telling me: "I know Spider had the paperwork.
22 Cheech told me."

23 I told him, "I don't know." I didn't
24 want -- there was only a few of us that knew Spider
25 had that paperwork. So I wasn't --

1 Q. Who is Spider?

2 A. David Calbert. When he was insisting,
3 "No, no. Cheech told me. I talked to him."

4 Q. Who is Cheech?

5 A. Joe Martinez.

6 Q. And when you say, "He's telling me, no,
7 Cheech told me --"

8 A. Yeah.

9 Q. What are you referring to?

10 A. He's referring to that he spoke to Cheech.
11 He didn't tell me at the time. It was on the phone.
12 He told me he spoke to Cheech.

13 Q. Okay.

14 A. He goes, "He told me that he gave the
15 paperwork to him."

16 I told him, "I don't know."

17 I didn't want Spider's name out there.
18 There is only maybe three of us that knew Spider had
19 that paperwork.

20 Q. And so were you worried about that?

21 A. I was worried he was being insistent like
22 that, because he's like -- either he's trying to
23 prove that he knows something about it and wants to
24 be involved, or --

25 Q. I don't want you to speculate.

1 A. Okay.

2 Q. So when was that conversation?

3 A. The same yard, with the Marcantel, and the
4 disappointment that me and Timothy Martinez and
5 Jerry Montoya -- it was the same conversation.

6 I believe the Discovery Channel Rookie
7 Year -- they attempted to film us that day, and we
8 both refused to let them film us.

9 Q. Okay. So it was on the day that Rookie
10 Year was there?

11 A. They filmed up there at the North.

12 Q. But you didn't agree to be filmed?

13 A. No.

14 MS. JACKS: Your Honor, may we have the
15 limiting instruction as to that testimony?

16 A. I didn't know --

17 THE COURT: You mean not as to the film,
18 but as to Mr. Baca's comments?

19 MS. JACKS: As to the alleged statements
20 of Mr. Baca.

21 THE COURT: Yeah, these statements that
22 are being elicited as Mr. Baca's cannot be used
23 against any other defendant. They can only be used
24 in your consideration of the charges against Mr.
25 Baca.

1 MS. ARMIJO: And Your Honor, may we
2 approach?

3 THE COURT: You may.

4 (The following proceedings were held at
5 the bench.)

6 MS. ARMIJO: I'm at the point now where I
7 was going to ask him about --

8 THE COURT: This right here. It's still
9 just not enough information here for me to say that
10 this is gang-related. If all he's going to say is
11 what's in this paragraph, it's just not enough to
12 link it with this. And --

13 MS. ARMIJO: This is why it's important
14 what he said in that paragraph. He talks
15 specifically about the warden and how it links to
16 SNM.

17 THE COURT: What?

18 MS. ARMIJO: How it links to SNM is that
19 he specifically was bragging he was doing this crime
20 in front of the warden. And in doing so, he is
21 raising his level in the SNM, and bragging about how
22 he had no regard for correctional officers. And
23 that's basically what he would say.

24 Now, we will be able to tie it in later
25 with both a recording, where he describes this call

1 with Eric Duran -- I mean, where he describes this
2 murder and brags about it with Eric Duran. And also
3 I believe that Gerald Archuleta, Styx, who is going
4 to be testifying, will be able to testify as to how
5 this is gang-related, that this was a gang hit.

6 Am I correct, Mr. Beck?

7 MR. BECK: Mr. Archuleta will testify that
8 the victim of the murder, the day before, had
9 stabbed an SNM member. And so this murder was in
10 retribution for an SNM stabbing. That's what
11 elevated Mr. Baca to the position of leader and was
12 admitted to the gang.

13 So this fits under the last element that
14 the United States must prove for VICAR, which is
15 that it was done either for the receipt of something
16 of value from the gang or to gain entrance, to
17 maintain, or increase position.

18 THE COURT: So this was Baca's entrance?
19 This was his entry into the gang?

20 MR. BECK: Right.

21 THE COURT: And you can make a
22 representation to the Court that Archuleta will
23 testify just as you outlined?

24 MR. BECK: No.

25 THE COURT: Because if I don't have

1 that --

2 MR. BECK: Right.

3 THE COURT: -- I've got a hiccup here.

4 MR. BECK: I think what's probably more
5 prudent -- I know this won't work out well for us --
6 I think it's probably more prudent to wait on
7 getting this statement from Mario Rodriguez until
8 after Mr. Archuleta testifies.

9 THE COURT: It would certainly be safer.

10 MR. BECK: I think so.

11 THE COURT: I'd be inclined to think, if
12 you've got that testimony from Archuleta, that would
13 it be appropriate, then, to have Rodriguez then
14 confirm that he was told about the murder, as well.

15 MR. BECK: I think so, too. I don't think
16 that will make Mr. Rodriguez pleased that he has to
17 stay down here, but I think it would be a better
18 record if we get that testimony in first, and then
19 bring him back on, if we do get that testimony. I
20 expect we will, but I can't say for sure.

21 THE COURT: Well, without an assurance
22 that it's coming in, I'm not going to let
23 Mr. Rodriguez, just on the basis of what was
24 provided in the letter, which I did review again,
25 and in this 302, the second paragraph -- I don't

1 think there is enough to go forward with Rodriguez.

2 MR. LOWRY: I appreciate that, Your Honor.
3 But we've been complaining about discovery
4 throughout the duration of this trial. And it's a
5 little disappointing to have, you know, this coming
6 out during the process. Is there any information we
7 can get from the Government to enlighten us about
8 this?

9 THE COURT: Do you have anything on
10 Archuleta?

11 MR. BECK: I can provide -- so, I mean, I
12 received that from his attorney. I can forward that
13 email to the defense.

14 Just for the record, I received that email
15 at 12:36 p.m. today.

16 THE COURT: During the lunch hour.

17 MR. BECK: About two hours ago.

18 MR. LOWRY: Do you understand why --

19 THE COURT: I think we're being prudent
20 not putting it in through Mr. Rodriguez. All we've
21 got to rely on is Mr. Rodriguez -- Mr. Archuleta's
22 attorney, and that's -- probably the Government's
23 wise not to be relying on that.

24 MR. CASTELLANO: There is another piece of
25 evidence related to this, which was disclosed long

1 ago. Mr. Baca makes an admission to Eric Duran
2 that's recorded. He also discusses the murders with
3 Eric Duran, another SNM Gang member. So this issue
4 has always been kind of floating out there.

5 MR. LOWRY: I don't want to belabor this,
6 but I just want to point out that, as with this
7 morning, they said the confidential informant
8 statements aren't reliable because everybody puffs.
9 And it's very situational where statements are
10 suddenly reliable and not puffing and vice versa.
11 And the fact that he was in Level 6 talking about
12 this, and puffing when he was put in Level 6 because
13 of threats made on his life, shouldn't be
14 surprising.

15 MS. DUNCAN: Your Honor, if I could just
16 add, it's true that he talks about this with Eric
17 Duran. But he doesn't say it's an SNM hit. There
18 is no dispute that Mr. Baca was convicted of this
19 murder in 1989. So I think that's in dispute
20 whether it's gang-related.

21 THE COURT: If they bring in Archuleta, I
22 do think that's probably enough to tie it to the
23 SNM.

24 MS. DUNCAN: The only thing we'd ask,
25 before they get the testimony from Mr. Archuleta,

1 they provide a basis for that knowledge. I think
2 this is more hearsay.

3 THE COURT: Okay.

4 MS. DUNCAN: Thank you.

5 (The following proceedings were held in
6 open court.)

7 THE COURT: All right. Ms. Armijo.

8 BY MS. ARMIJO:

9 Q. Now, Mr. Rodriguez, you were charged in
10 this case -- I believe you said you were arrested in
11 December of 2015?

12 A. December 3. With the feds?

13 Q. Yes.

14 A. Yes, ma'am.

15 Q. And how many cases were you actually
16 charged in?

17 A. Two.

18 Q. And involving which incidents?

19 A. The Alex Sosoya incident from 2011, and
20 the Molina from 2014.

21 Q. Okay. And so who, if you recall, were you
22 charged with along -- in the Sosoya incident?

23 A. With Robert Martinez, Baby Rob.

24 Q. And are you aware of whether or not he's
25 cooperating with the United States?

1 A. He is.

2 Q. Was that case set to go to trial?

3 A. It was.

4 Q. And when was that going to go to trial?

5 A. I think the week after October -- what is
6 it? October 24?

7 Q. Of which year?

8 A. Of this year -- or last year. What year
9 are we in? 2018?

10 Q. Yes.

11 A. 2017.

12 Q. And were you preparing to go to trial?

13 A. I was.

14 Q. Were you the only one that was left in
15 that case that was going to go to trial?

16 A. Unfortunately, yes.

17 Q. And at some point prior to that trial, did
18 you make a decision about whether to go forward with
19 that trial?

20 A. I did.

21 Q. Okay. Tell us about that.

22 A. The day of October 24?

23 Q. Well, yes, about your decision not to go
24 forward with the trial.

25 A. I showed up to court. I was ready to go

1 to trial. I knew that I was being used as, like, a
2 test run with other lawyers. I knew that they
3 wanted to see the outcome of my case.

4 MR. VILLA: Objection, Your Honor. Can we
5 approach?

6 THE COURT: You may.

7 (The following proceedings were held at
8 the bench.)

9 MR. VILLA: Your Honor, I think that --

10 THE COURT: Let me suggest this. What is
11 it that you want him to say?

12 MS. ARMIJO: He's going to get in that
13 basically he was prepared to go to trial and he came
14 to the decision to cooperate.

15 THE COURT: That's all you want out of
16 him?

17 MS. ARMIJO: Yes.

18 THE COURT: Because it sounds like he's
19 about to talk about his mother-in-law and everything
20 else. Can you just lead him through that?

21 MS. ARMIJO: Sure.

22 THE COURT: Is that okay with you?

23 MR. VILLA: I have a couple of problems,
24 Judge. I'm okay with that, but I think the cat's
25 out of the bag. He says he was being used by other

1 lawyers as a test run.

2 THE COURT: I don't know what to do about
3 that.

4 MR. VILLA: I think, one, a mistrial is
5 appropriate.

6 Two, I think that comes from information
7 learned through the privilege, the joint defense
8 privilege. And I think it's completely
9 inappropriate testimony. And the Government is well
10 aware of that.

11 THE COURT: Let me do this: If there is
12 no problem, tell the jury to strike his answer.
13 Start over and then lead him through this as to why
14 he decided to plea.

15 MR. BECK: Your Honor, I think his
16 testimony is responsive. I think if it's his
17 privilege under the defense agreement, it's his
18 privilege.

19 THE COURT: I don't want to get into that
20 right now. That might take a lot of research to
21 decide whether a defendant here can just waive a
22 joint privilege on his own. And I don't think it's
23 necessary. Doesn't sound like it's anything you
24 really need. So let's do it that way. I'll tell
25 them to strike the answer and not to consider it,

1 and start over as to --

2 MS. BHALLA: Just for the record,
3 Defendant Herrera joins in the motion for the
4 mistrial.

5 THE COURT: All the defendants.

6 MR. LOWRY: Your Honor, I'd like to add
7 one point to this. I don't want to belabor it, but
8 this testimony dovetails uniquely with the
9 Government's theory that individuals like Mr.
10 Rodriguez were used, in his words, as torpedoes for
11 the benefit of the enterprise. And that's why they
12 wanted to solicit precisely that to show that he's
13 being used as a tool for the benefit of others. And
14 I just think it's highly prejudicial, and I move for
15 a mistrial.

16 THE COURT: Okay.

17 MS. JACKS: Mr. Sanchez joins in the
18 objection and motion for mistrial.

19 THE COURT: Okay.

20 (The following proceedings were held in
21 open court.)

22 THE COURT: Ladies and gentlemen,
23 Mr. Rodriguez was telling you a few things about why
24 he decided to plea. Ignore those. Strike them from
25 the record. We're going to start over.

1 Ms. Armijo, you can ask your questions
2 again, and then we'll get the reasons for his plea.

3 BY MS. ARMIJO:

4 Q. All right. Mr. Rodriguez, you indicated
5 that you were going to go ahead and go to trial; is
6 that correct?

7 A. Yes, ma'am.

8 Q. And at some point when you were getting
9 ready to go to trial, I think you said that you were
10 going to trial alone?

11 A. Right.

12 Q. And there was a court proceeding that I
13 believe you said you thought it was October 24; is
14 that correct?

15 A. I think it was, yes.

16 Q. And when you came to that court
17 proceeding, were you the only person left in that
18 case of yours regarding Mr. Sosoya?

19 A. Yes, I was. I was the only one left on
20 that indictment.

21 Q. And as far as -- when you came to court,
22 you were still prepared to go to trial; correct?

23 A. Yes, ma'am.

24 Q. All right. Now after that court
25 proceeding -- because I assume -- do you recall it

1 was a pretrial hearing?

2 A. A pretrial hearing.

3 Q. After that proceeding, did you actually
4 have an opportunity to sit down with the United
5 States?

6 A. I did.

7 Q. Okay. And when you walked into that room
8 with the United States, did you have any intention
9 of cooperating?

10 A. No.

11 Q. When you sat down, would it be fair to say
12 with that meeting, without -- that the United States
13 spoke to you about cooperating, but at that point in
14 time you just weren't interested?

15 A. I wasn't interested.

16 MR. VILLA: Objection, leading.

17 THE COURT: Overruled.

18 A. I wasn't interested in cooperating.

19 BY MS. ARMIJO:

20 Q. Now, after that meeting, did you have an
21 opportunity to think about it?

22 A. I think I spoke to my lawyer. You guys
23 left. I spoke to my lawyer, and I just said, "I'm
24 done." And he contacted someone else's lawyer and
25 told them.

1 Q. I don't want to get into what your
2 attorney did or anything else.

3 A. Okay.

4 Q. But at some point you said you spoke to
5 him and you said, "He's done"?

6 A. That's what I said. "I'm done."

7 Q. You're done, so --

8 A. "I'm done."

9 Q. Okay. What did you mean when you said,
10 "I'm done"?

11 A. I don't want to be an SNM member no more.
12 I don't want to be a gang member no more. I was
13 tired of it.

14 Q. How old are you?

15 A. I'm 33.

16 Q. And I believe we heard from your testimony
17 earlier today that you've been incarcerated since
18 you were 18?

19 A. I was 18.

20 Q. You made that decision with your attorney?

21 A. I did.

22 Q. After meeting with your attorney, did you
23 then meet with the United States?

24 A. I did.

25 Q. And when you made that decision, when you

1 came to court that day, did you have any intentions
2 of cooperating?

3 A. No, ma'am.

4 Q. Was that an easy decision for you?

5 A. Still not.

6 Q. Still having a hard time with it?

7 A. Yes, ma'am.

8 Q. And why is that?

9 A. I've been a gang member all my life. I've
10 been a gang member all my life. I put my all into
11 the SNM. Every day I tried to be a better SNM
12 member. I just gave it my all. I was good at it.
13 That's something I was great at, something that I
14 felt you put in the work, and they can't take the
15 respect away from you. They can't -- you know, you
16 earn it; they've got to give it to you. And I did
17 everything for the SNM that they asked me for. I
18 did everything above and beyond. And it was hard.
19 I'm a gang member. I was a gang member. That's all
20 I've been all my life.

21 Q. Now, did you eventually enter into a plea
22 agreement?

23 A. I did.

24 Q. All right.

25 MS. ARMIJO: And I'm going to move for the

1 admission of 682 into evidence. I believe there is
2 no objection.

3 THE COURT: Any objection to Government's
4 Exhibit 682?

5 MR. VILLA: No objection.

6 MR. LOWRY: No objection, Your Honor.

7 THE COURT: All right. Not hearing any
8 objections, Government's Exhibit 682 will be
9 admitted into evidence.

10 (Government Exhibit 682 admitted.)

11 BY MS. ARMIJO:

12 Q. Okay. We're looking at the first page.
13 Is this the first page of your plea agreement?

14 A. Yes.

15 Q. And does it have -- I'm going to circle --
16 it says "criminal cause numbers." Does that reflect
17 that this covers both cases of yours?

18 A. Yes, ma'am.

19 Q. All right. And I'm going to go to page 3,
20 please. All right. And on page 3 there is
21 information as to sentencing. And it says under
22 cause number 15-4269 -- is that the case that you
23 were talking about in reference to Mr. Sosoya?

24 A. Yes, ma'am.

25 Q. And in that case you can be sentenced up

1 to 20 years on one count, and up to 10 years on the
2 other count; is that correct?

3 A. Yes, ma'am.

4 Q. And if we could go to the next page,
5 please. All right. And then paragraph 8 of this
6 exhibit, which is Exhibit Number 682, it has here
7 the punishment as to Count 7 in this case; is that
8 correct?

9 A. Yes, ma'am.

10 Q. Okay. It says a term of imprisonment of
11 life. Okay. Does that mean -- what is your
12 understanding of that?

13 A. It's over. You never get out.

14 Q. All right. So that doesn't say it's a
15 possible up to life, does it? What's your
16 understanding?

17 A. No -- oh, okay, if I would have went to
18 trial or from this?

19 Q. Yes.

20 A. If I went to trial?

21 Q. What you pled to. It says a term --

22 A. Up to 30 years, I think.

23 Q. Okay. We saw the other two that are 30
24 years; correct?

25 A. Right.

1 Q. But as you pled to this case -- and we'll
2 get to any benefit --

3 A. All right.

4 Q. -- in a minute. But as it stands right
5 now, as it pled as to Count 7, what is it that you
6 are facing a mandatory term of?

7 A. A life sentence.

8 MR. VILLA: Objection, Your Honor. It's
9 misleading.

10 THE COURT: Well, I'll let you go back
11 into it on cross. Overruled.

12 BY MS. ARMIJO:

13 Q. Does it say that you're subject to
14 anything else, other than life?

15 A. No, not that I see.

16 MR. VILLA: Same objection.

17 THE COURT: Overruled.

18 A. Five years supervised release. But that
19 shit doesn't matter, because you're doing life. You
20 know what I mean?

21 BY MS. ARMIJO:

22 Q. Is there any -- and if you know this, yes
23 or no -- did your attorney tell you whether or not
24 in the federal system there is any parole?

25 A. There is no parole in the federal system.

1 Q. Okay. Now, are you aware of what a life
2 sentence in the state is?

3 A. I'm not.

4 Q. Okay. Because you were never sentenced to
5 a life --

6 A. No, I was not.

7 Q. Now, did you in this plea agreement have
8 any agreements with the United States as to what
9 your sentence is in the plea agreement?

10 A. I think it was just to run the first one
11 concurrent, and sign over my state custody.

12 Q. All right. Now, do you believe that
13 that's in there, or is that something you just want
14 to occur -- okay, no. Here we go. Sorry. Going to
15 page 7 of this document. All right. I'm going to
16 paragraph 13, paragraph C. Is that what you're
17 referring to, that the United States has no
18 objection to the sentences in both your federal
19 cases running concurrently with each other?

20 A. Yes, ma'am.

21 Q. And that the United States has no
22 objection with the sentences in these cases to run
23 concurrent with any state sentence that you're
24 serving?

25 A. Yes, ma'am.

1 Q. Is that the only agreement that you have
2 with the United States?

3 A. I believe I was given a 5K.

4 MR. VILLA: Objection.

5 THE COURT: I'm sorry?

6 MR. VILLA: Withdrawn.

7 THE COURT: All right.

8 A. I was given a 5K, a Kastigar letter.

9 BY MS. ARMIJO:

10 Q. I was going to talk about that. When you
11 spoke to the United States, did we provide you with
12 a letter?

13 A. Yes, ma'am.

14 Q. That you went over with your attorney?

15 A. Yes, ma'am.

16 Q. And you mentioned a Kastigar. What do you
17 mean by "Kastigar"?

18 A. I think it's for cooperation; that --
19 well, I don't know the whole thing of it. I just
20 know it's something I had to sign before I started
21 talking to you guys.

22 Q. Did your attorney advise you that you
23 could have certain protections by talking to the
24 United States?

25 A. Oh, right, right.

1 Q. Does that sound familiar?

2 A. Yes, he spoke to me about stuff like that.

3 Q. Now, you mentioned 5K.

4 A. Um-hum.

5 Q. What is 5K to you? What does that mean?

6 A. Well, it means that there is a
7 possibility, up to the judge's discretion, that I
8 can get a sentence reduction, from what I
9 understand.

10 Q. And who makes that decision?

11 A. The judge.

12 Q. As far as what the reduction is?

13 A. I believe so.

14 Q. And who -- do you know -- this is yes or
15 no -- do you know who, in fact, files that motion
16 for the judge to consider it?

17 A. My attorney.

18 Q. Your attorney does?

19 A. I believe so. I'm not aware of it.

20 Q. Okay.

21 A. I haven't asked.

22 Q. Okay. But it's your understanding that
23 there is a possibility -- and what is the 5K based
24 on; do you know?

25 A. To be honest, I don't know. I was just

1 happy to be away from the gang life. I was so
2 excited to be away from gang life that if you guys
3 want to give me a sentence reduction, give me a
4 sentence reduction. You know? And even though I
5 pled out to these charges and I was facing a zero
6 life, now I just have no more hatred. I was just so
7 happy to be rid of the gang life.

8 So when you're asking me the guidelines
9 and stipulations to it, I can't tell you.

10 Q. All right.

11 A. I would have to go over it and read it.
12 But there is a lot of stuff I don't understand. I
13 just know that I signed it, and it's part of getting
14 the fuck away from the gang life.

15 Q. Now, I believe the date of that is
16 November 1st of 2017; is that correct?

17 A. The date of what?

18 Q. Of your guilty plea.

19 A. I'm just aware of October 24. I don't
20 remember what the other --

21 Q. Okay. If you can look on the screen --

22 A. Where?

23 Q. Maybe we can go to the last page of this
24 document. All right. Do you see there that it
25 says, "Agreed and signed this 1st day of November"?

1 A. Yes, ma'am.

2 Q. And do you see on top of that that it says
3 "Document 183, filed 11/1/17"?

4 A. I do.

5 Q. Okay. What does that lead you to believe?

6 A. November 1st, I pled guilty to these
7 charges on both indictments, of 2017.

8 Q. So up until October 24, were you
9 cooperating with the United States?

10 A. No.

11 Q. Since that time, have you received any
12 other benefits from the United States?

13 A. I think you guys gave me \$50 a month, or
14 something like that.

15 Q. In your commissary?

16 A. Yes.

17 Q. And the day of your plea agreement, did
18 you have an opportunity to meet with your family --

19 A. I did.

20 Q. -- to tell them the situation?

21 A. I had -- I think it's a threat analysis
22 meeting with Mr. Acee and Nancy Stemo and the
23 prosecution, on what danger my life would be in, and
24 what danger my family's life would be in.

25 MR. VILLA: Objection, Your Honor.

1 Q. All right.

2 THE COURT: Do you want to elicit this?

3 MS. ARMIJO: I'm sorry?

4 THE COURT: Do you want to elicit this?

5 MS. ARMIJO: Yes.

6 BY MS. ARMIJO:

7 Q. Now, did you -- as part of your
8 cooperation, did you have a chance, then, after your
9 guilty plea to talk and meet with your family?

10 A. Yes, ma'am.

11 Q. Okay. And was that a benefit that you
12 received as part of your guilty plea?

13 A. It wasn't something I was told I would get
14 for pleading guilty. I thought it was just a threat
15 analysis meeting.

16 Q. Okay.

17 A. But I --

18 Q. Did it have anything to do with you
19 pleading guilty?

20 A. No.

21 Q. Okay. But it was something that happened
22 after you pled guilty?

23 A. Yes, ma'am.

24 Q. And I believe you indicated now -- did you
25 have -- do you still have your tablet?

1 A. I do.

2 Q. Okay. It was never taken away from you?

3 A. No, ma'am.

4 Q. You never had anything to do with the
5 tampering of your tablet?

6 A. I never lived around any of those guys
7 that were doing that.

8 Q. Oh, okay.

9 A. I was in Chaparral the whole time with the
10 rest of the defendants.

11 MS. ARMIJO: I have no further questions.
12 Thank you.

13 THE COURT: Thank you, Ms. Armijo.

14 Mr. Lowry, are you going to go first? Mr.
15 Villa?

16 MR. VILLA: Yes, Your Honor.

17 THE COURT: All right. Mr. Villa.

18 MS. ARMIJO: Oh, Your Honor, I do need to
19 move into evidence -- I'm sorry -- numbers 751 and
20 752 at this time. And those are the two diagrams
21 that previously the defense had allowed me to use
22 and to write on.

23 THE COURT: Any objection to those?

24 MS. JACKS: No.

25 MR. VILLA: No, Your Honor.

1 THE COURT: Not hearing any objection,
2 Government's Exhibits 751 and 752 will be admitted
3 into evidence.

4 (Government Exhibit 751 and 752 admitted.)

5 THE COURT: All right. Mr. Villa.

6 MR. VILLA: Sorry, Judge.

7 THE COURT: That's all right. Take your
8 time.

9 CROSS-EXAMINATION

10 BY MR. VILLA:

11 Q. Good afternoon, Mr. Rodriguez.

12 A. Good morning -- good afternoon. It's been
13 a long day.

14 Q. It has been.

15 So Mr. Rodriguez, I want to take you back
16 to what you told Ms. Armijo about when you took the
17 piece from Mr. Perez' walker. Okay?

18 A. All right.

19 Q. And I think it was your testimony that you
20 went into his cell; correct?

21 A. Yes, sir.

22 Q. And that you asked the CO to open the door
23 to his cell; true?

24 A. Yes, sir.

25 Q. And so when somebody asks the CO to open

1 the cell, they'll do it for you?

2 A. One cell at a time, yes. Open one, then
3 open the next one.

4 Q. So when you asked, they opened Mr. Perez'
5 cell?

6 A. Yes, sir.

7 Q. And you testified that you walked in there
8 and you took the walker; right?

9 A. Yes, sir.

10 Q. You put it on the bed?

11 A. I tilted it at an angle where the bolt was
12 facing up, and it was resting on the end of the
13 mattress.

14 Q. The mattress on the bed?

15 A. Yes.

16 Q. And you grabbed it, and you said you were
17 looking for some nail clippers to take it off;
18 right?

19 A. I turned around to ask Dan, and Dan wasn't
20 there. I seen some nail clippers on the table.
21 They were Rudy Perez'. I got them, took off the
22 lever, the little nail that holds the lever
23 together, and you open them up, like some pliers,
24 and twisted it off.

25 Q. And you were able to take the piece off

1 yourself?

2 A. Yes, sir.

3 Q. You would agree with me that that piece --
4 can I see Government's Exhibit 89 -- you would agree
5 with me that piece is used to stabilize the walker;
6 correct?

7 A. It is.

8 Q. We'll take a look at the picture here in
9 just a second.

10 A. I don't know the construction of it, but
11 it's there for a reason.

12 Q. You could tell just by looking at it that
13 that was a stabilization piece; correct?

14 A. Yes, sir.

15 Q. Give me just a second. We'll look at
16 that.

17 So Mr. Perez didn't do anything to help
18 you actually physically take the piece off the
19 walker?

20 A. No, sir.

21 Q. He didn't help you unscrew it or anything
22 like that?

23 A. No, he did not.

24 Q. He didn't tell you how to take it off?

25 A. No.

1 Q. He just stood there?

2 A. He just stood there. Told me he was down
3 for whatever.

4 Q. We'll get to that in just a minute. But
5 I'm just talking --

6 A. Okay.

7 Q. -- physically what Mr. Perez did. He
8 didn't assist you in any way physically?

9 A. No, sir.

10 Q. And I think it was your testimony that you
11 got to Southern, December 2013?

12 A. Yes.

13 Q. So this happens March 7, 2014; correct?

14 A. Yes, sir.

15 Q. Just about three months later?

16 A. Three months later.

17 Q. January, February, March. Three months
18 later. And December 2013 was the first time you met
19 Mr. Perez?

20 A. It is.

21 Q. You didn't know him before that?

22 A. I did not.

23 Q. But during those three months that Mr.
24 Perez was there, and you were there at the same
25 time, in blue pod, Mr. Perez was pretty sick, wasn't

1 he?

2 A. Not at that time. He came back from
3 surgery.

4 Q. He had come back from surgery from --

5 A. I didn't know his conditions or nothing.
6 I never really spoke to him, so I don't know how bad
7 his illness was or anything like that.

8 Q. So you didn't know what his conditions
9 were?

10 A. I did not.

11 Q. So the people that know his conditions --
12 they could speak better to that?

13 A. Yeah.

14 Q. You would agree with me that he spent most
15 of his time in his cell?

16 A. Most of the time he spent in the cell.

17 Q. He didn't come out of his cell very often?

18 A. Once in a while, but not very often.

19 Q. He didn't go to the yard very often?

20 A. He would go to the yard with us, yes.

21 Q. But not every day?

22 A. No.

23 Q. And a lot of people would go to yard every
24 day, but not Mr. Perez?

25 A. A majority, some -- like maybe three out

1 of a pod will go every day. Some want to stay in.
2 But yes, he would come out maybe four times a week.

3 Q. And when you saw him, he didn't look
4 healthy; right? He had a walker, didn't he?

5 A. I've seen him run around, and Dan would
6 have him in a little workout routine. He can move.

7 Q. You'd agree with me that Mr. Perez -- do
8 you know that he's 49 years old?

9 A. Yes.

10 Q. And three years ago, I guess he's about 46
11 years old? I'm bad at math.

12 A. Was it three years ago this happened?

13 Q. Maybe four years ago. So about four years
14 ago he's 45; right?

15 A. Right.

16 Q. And he looked about the way he looks now?
17 Maybe just a little different?

18 A. He looks like he put on an extra 50, 60
19 pounds since then.

20 Q. Okay. Now, Mr. Rodriguez, let's talk
21 about Exhibit 89 here, that -- the sheets that I'm
22 drawing the line from. That's where you took the
23 piece off; right?

24 A. Yes, sir.

25 Q. And Mr. Perez, again, didn't help you do

1 that?

2 A. No, he did not.

3 Q. And I think that you testified that you
4 don't know how the sheets got on there; right?

5 A. No.

6 Q. But the sheets -- at least just from
7 looking at this photograph, you would agree with me,
8 if the piece you took off stabilized the walker, the
9 sheets are being used right in the place where you
10 took the piece off; right?

11 A. Yes.

12 Q. So it helped stabilize the walker; right?

13 A. Right.

14 Q. Now, you testified that while you were
15 taking the piece off of Mr. Perez' walker, he said,
16 "I'm down for whatever, as long as it's not me"?

17 A. Yes, sir.

18 Q. Right? And then Ms. Armijo asked you, was
19 there anything unusual about the way he spoke? And
20 you said no; right?

21 A. No.

22 Q. And she asked, were his mannerisms normal?
23 And you said no; right?

24 A. They were normal.

25 Q. But when you talked to the Government and

1 Agent Acee on October 24, 2017, that's not exactly
2 what you said, is it?

3 A. I don't recall what I said then.

4 Q. Okay. Well, we'll get to what you said
5 then in just a minute. But let me ask you, since
6 October 24, 2017, how many times have you met with
7 the United States?

8 A. As far as prep?

9 Q. Period.

10 A. In reference to this case?

11 Q. Yes, sir.

12 A. I think my initial debrief, and then last
13 Saturday.

14 Q. So your initial debrief was October 24;
15 correct?

16 A. Yes.

17 Q. And then you're saying that the other time
18 you met with them was last Saturday?

19 A. I think it was last Saturday, yes, on a
20 prep.

21 Q. And those are the only times?

22 A. Yes, sir.

23 Q. And that includes anything that you've
24 done in connection with your cooperation?

25 A. Well, I met with, I think -- who was it?

1 Chris Cupit on a time. But it had nothing to do
2 with this case.

3 Q. Okay. Any other times that you met with
4 the Government related to this case, or anything
5 having to do with cooperation against the SNM?

6 A. I think maybe total three times.

7 Q. Okay. So we know about October 24; right?

8 A. Right.

9 Q. And we know about last Saturday?

10 A. Right.

11 Q. Then you said there was one other time?

12 A. Yeah. But I don't know if I can disclose
13 it. But it's other investigations.

14 Q. Well, can you tell me the date?

15 A. I cannot.

16 Q. Can you tell me the month?

17 A. I got up to the North. It was probably
18 late November.

19 Q. And with whom were you meeting with the
20 Government?

21 A. Chris Cupit.

22 Q. Anybody else?

23 A. No.

24 Q. Agent Acee wasn't there?

25 A. No, he was not. There was a guy named

1 Paul -- Paul or Roy -- I don't remember his name.
2 He kind of resembles Matthew Beck.

3 Q. But none of these individuals sitting at
4 this table were there?

5 A. No.

6 Q. And that's the only time you had meetings
7 with the Government?

8 A. Yes, sir.

9 Q. So you didn't meet with them to prepare
10 for your trial testimony except for Saturday?

11 A. Except for Saturday.

12 Q. This past Saturday?

13 A. Yes, sir.

14 Q. Who was present at that meeting?

15 A. I think Ms. Armijo, Castellano, and Beck.

16 Q. Anybody else?

17 A. I think Bryan Acee. I'm not sure. Was
18 he? No, he wasn't there on Saturday. It was just
19 the prosecutors.

20 Q. What were you told by the prosecutors?

21 A. As far as what?

22 Q. What did they tell you?

23 A. They didn't really tell me much. I told
24 them what my testimony would be.

25 Q. Okay. Did they talk to you about the

1 testimony that's come out in trial so far?

2 A. No.

3 Q. Did they talk about the opening statements
4 or what the defenses of the defendant are?

5 A. No.

6 Q. Other than those three, nobody else was
7 there?

8 A. No. There was correctional officers
9 sitting for security, but they were just on the
10 outer -- like watching the door and shit like that.

11 Q. Anybody else present?

12 A. Not that I'm aware of.

13 Q. We've covered all the meetings you've had
14 with either the United States attorneys or Agent
15 Acee or anybody else from the FBI; right?

16 A. Again, I can't recall any off the top of
17 my head right now. I believe that's it.

18 Q. Okay. I mean, October 24, 2017, I guess
19 that's, what, January, December, November, about
20 three and a half months ago?

21 A. Right.

22 Q. So not that long ago; right?

23 A. Not long ago.

24 Q. So your memory is pretty fresh, isn't it?

25 A. My memory is very good.

1 Q. You seem to have a pretty good memory?

2 A. I do.

3 Q. So you don't remember any other meetings?

4 A. I don't.

5 Q. That's all you've got?

6 A. Pretty much all I got.

7 Q. So now, let's talk about what you said to
8 Agent Acee -- well, let me back up. On October 24,
9 2017, when you sat down and met with the Government,
10 Ms. Armijo was there; right?

11 A. Yes.

12 Q. Mr. Castellano was there; right?

13 A. Yes, sir.

14 Q. Mr. Beck was there?

15 A. Yes.

16 Q. And there was an FBI agent by the name of
17 Nancy Stemo there?

18 A. Yes, sir.

19 Q. Was Agent Acee there also?

20 A. On that time?

21 Q. Yes, sir, October 24.

22 A. No, he was not there that time.

23 Q. And you talked about at that time, on
24 October 24, how you took the piece from Mr. Perez'
25 walker; right?

1 A. I did.

2 Q. And you talked about the statement you
3 made, where Mr. Perez said, "I'm down for whatever,
4 as long as it's not me"; right?

5 A. Right.

6 Q. You don't remember what you said about Mr.
7 Perez's mannerisms? Is that what you're telling
8 this jury?

9 A. I don't think I paid attention to them.

10 Q. You don't think you paid attention to
11 them?

12 A. No.

13 MR. VILLA: May I approach, Your Honor?

14 THE COURT: You may.

15 BY MR. VILLA:

16 Q. Mr. Rodriguez, I'm going to show you a
17 document. And when you answer, you'll have to use
18 the mic. I talk pretty loud, but -- so this is a
19 document from the Federal Bureau of Investigations;
20 right?

21 A. Yes, sir.

22 Q. And it says October 24, 2017?

23 A. Yes, sir.

24 Q. And it says that Special Agent Nancy Stemo
25 interviewed Mario Rodriguez, a/k/a Blue; right?

1 A. Yes.

2 Q. That's you?

3 A. That's me.

4 Q. That's the same date that you did your
5 interview?

6 A. Right.

7 Q. I'm going to flip over, and I'm going to
8 show you page 6 of this document; right?

9 A. Okay. 6 of 9.

10 Q. And you said --

11 MS. ARMIJO: Objection, improper
12 impeachment. If he wants to show that to the
13 witness to see if it refreshes the witness'
14 recollection, and then ask him questions about it.
15 But just reading the document is improper without
16 first allowing him to read it.

17 THE COURT: Are you trying to refresh his
18 memory?

19 MR. VILLA: No, Your Honor. It's
20 impeachment of his direct testimony.

21 THE COURT: Well, I'll let this continue.
22 Overruled.

23 BY MR. VILLA:

24 Q. So you talk about the part where you're
25 going to take the piece from the walker. And it

1 says, "Perez appeared scared, and stated that he,
2 Perez, 'was down for whatever as long as it was not
3 me.' "

4 Did I read that right?

5 A. Yes, sir.

6 Q. So Agent Stemo in her interview said that
7 you said Mr. Perez looked scared; right?

8 A. That's what she says.

9 Q. Okay. And it also says that "Rodriguez,"
10 you, "understood Perez did not want to be hurt, and
11 would go along with the hit if he, Perez, did not
12 otherwise have to be involved"; right?

13 A. Right.

14 Q. And I read that right?

15 A. You read that right. I think the only
16 thing is that he didn't want to be hurt, would be
17 that he knew if he didn't give it up, you know,
18 you're not a part of the hit. You know, everyone
19 has their part in the SNM.

20 Q. So -- and if he didn't give it up, he
21 could get himself in trouble, too, couldn't he?

22 A. Yes.

23 Q. He could be killed?

24 A. Possibly.

25 Q. Right? I mean, that's a potential

1 consequence?

2 A. That's a potential consequence.

3 Q. And after you take the walker piece and
4 leave, if he had said to a Correction officer, "Hey,
5 Mr. Rodriguez just came and took my piece. I think
6 he's going to use it to hurt somebody," that's
7 telling on you; right?

8 A. That's telling. Yes, it is.

9 Q. And that could get him killed?

10 A. Yes.

11 Q. So I want to back up just a little bit and
12 talk to you about what happened with Mr. Molina.

13 Before Mr. Urquizo ever got to Southern
14 New Mexico, you made a phone call to his brother,
15 didn't you?

16 A. I recall calling his brother one time,
17 yes.

18 Q. And the purpose of the phone call was to
19 get the message to Mr. Urquizo to bring that
20 paperwork down?

21 A. No.

22 Q. Okay. So if Mr. Urquizo testified that
23 that was the purpose, then Mr. Urquizo is incorrect?

24 A. That's incorrect. I never asked about no
25 paperwork in that conversation.

1 Q. But you would agree with me, as you
2 testified on direct, that you were willing to do the
3 hit on Mr. Molina if you saw the paperwork?

4 A. Yes.

5 Q. And you were willing to do that before you
6 ever left PNM; right?

7 A. If I had taken the paperwork with me?
8 Yes.

9 Q. And when you left PNM, you thought, if I
10 get down there and I see the paperwork at a later
11 date, you're willing to do the hit?

12 A. Yes.

13 Q. And as a matter of fact, when this
14 paperwork arrived, at least according to you, you
15 volunteered to do the hit, didn't you?

16 A. Myself and Sanchez, yes.

17 Q. But you wanted to do it; you wanted to be
18 involved.

19 A. "Me and you."

20 Q. What's that?

21 A. I asked him, "Me and you, right?" Yes, I
22 was going to be involved, yes.

23 Q. And as a matter of fact, it was you that
24 noticed Mr. Urquizo's name on the board, and knew he
25 was arriving there in the yellow pod; right?

1 A. No.

2 Q. Well, you didn't notice his name on the
3 board?

4 A. I wasn't the initial one that noticed it.

5 Q. I'm not asking about anybody else. But
6 you noticed it; right?

7 A. I went to the top tier, in the left
8 corner, and read the white board.

9 Q. That's the board in the control room?

10 A. Yes, sir.

11 Q. And based on that, you went to try to
12 communicate with the yellow pod, to try to
13 communicate with Mr. Urquizo; right?

14 A. He wasn't there at that time. That was
15 three or four hours prior to him arriving.

16 Q. I'm sorry, when they arrived --

17 A. Right.

18 Q. -- you had the opportunity to try to find
19 out, does he have the paperwork?

20 A. No, I didn't ask him at that time.

21 Q. I don't mean right when he arrived. I
22 mean, you knew he arrived. And the next day you get
23 out, and you're in the sally port; right?

24 A. Right.

25 Q. And you wanted to know about the

1 paperwork; right?

2 A. Yes, sir.

3 Q. So that you could see it?

4 A. Yes, sir.

5 Q. Because if the paperwork indicated that
6 Mr. Molina was telling, you were going to help
7 execute this hit, weren't you?

8 A. I was. I was and I did.

9 Q. And when you got the paperwork and you
10 looked at it, I think you said in your direct
11 testimony that you were waiting to see if Mr. Molina
12 had named names?

13 A. Right.

14 Q. And I don't think Ms. Armijo asked you the
15 question, but did the paperwork that you looked at
16 indicate whether Mr. Molina named names?

17 A. There was no names in it.

18 Q. It did have Mr. Molina's name?

19 A. Yeah, in bold letters and underlined, I
20 believe.

21 Q. And did it indicate that Mr. Molina was
22 telling on somebody?

23 A. Yeah, it was telling. According to the
24 SNM, yeah, it's telling.

25 Q. Tell me why it was telling.

1 A. Well, because he disclosed that there was
2 a crime that took place, and where the evidence was
3 thrown away at.

4 Q. But he didn't name anybody's name?

5 A. He did not.

6 Q. But that was enough for you, at least in
7 your mind, to do the killing; right?

8 A. When Dan said, "It's done," I said, "Fuck,
9 it's done."

10 Q. I'm not asking you about Mr. Sanchez. I'm
11 asking about you.

12 A. At first, inside I looked at it and, you
13 know, it was stamped. It was real paperwork. It
14 just didn't seem that it was that bad. Certainly
15 not as bad as what I'm doing, you know.

16 Q. And let me ask you this. Does it matter
17 whether what Mr. Molina says to the police, where
18 the evidence is, that a crime occurred -- does it
19 matter whether what Molina is saying to the police
20 is true or not?

21 A. Well, it's in a police report, no.

22 Q. So the fact that he said it, whether that
23 information is actually true is enough to get him
24 killed?

25 A. It could have been him that thrown it, and

1 saying that it was someone else in the car. And
2 that's enough.

3 Q. Or he could just be making stuff up;
4 right?

5 A. He could be making stuff up.

6 Q. So it doesn't matter if he's telling the
7 truth or telling lies? Telling is telling?

8 A. It's in a police report and we take it as:
9 Why are you going to say it, if it's not the truth?

10 Q. I mean, there are reasons why people might
11 lie to the police; right?

12 A. I don't know if you're going to implicate
13 yourself and still lie about it.

14 Q. I mean, I'm just saying generally
15 speaking.

16 A. I couldn't say. I don't know.

17 Q. So let's talk about SNM rules, because you
18 talked a little bit about SNM rules.

19 A. Right.

20 Q. If you found out that somebody said
21 something to the police or the prosecutors, or
22 testified in court, or whatever, does it matter
23 whether you think they were telling the truth or
24 not?

25 A. Most of the time, no. There is a lot of

1 politics behind it and further SNM stuff going on.

2 But for the most part, no.

3 Q. I mean, you agree with me that sometimes
4 witnesses come to court and lie, don't you?

5 A. Well, they probably do, yes.

6 Q. Okay. So whether -- if an SNM member or
7 somebody else came to court, whether they tell the
8 truth or tell a lie, they're in trouble?

9 A. Yes.

10 Q. So you get the information from the
11 paperwork that you looked at, and you start putting
12 things in motion, don't you?

13 A. Myself and Daniel Sanchez, yes.

14 Q. Yourself?

15 A. Right.

16 Q. Right?

17 A. Right.

18 Q. I think one of the things that you did
19 first was take the piece from Mr. Perez' walker;
20 right?

21 A. In, like, the -- my actions? Yes. Yeah.

22 Q. Yes, let's talk about your actions.

23 That's what I want to talk about.

24 A. Yeah.

25 Q. You took the pieces from Mr. Perez'

1 walker, and then you took them into your room;
2 right?

3 A. Yes.

4 Q. And started to break it up so you could
5 make shanks?

6 A. At that time, not right away, no.

7 Q. I understand.

8 A. I put it in my hamper.

9 Q. I know it happened over a couple of hours,
10 basically. But if I understand it correctly, you
11 went to Mr. Perez' room on March 7, 2017; right?

12 A. Yeah, I was called over there.

13 Q. The same day that Mr. Perez (sic) --
14 excuse me, the same day that Mr. Molina was killed?

15 A. Same day, yes.

16 Q. Okay. And I think it was your testimony
17 that you went to Mr. Perez' room before you all went
18 to the big yard; right? Or is it called large yard?

19 A. Phone yard.

20 Q. Phone yard?

21 A. It's the yard right outside the unit.

22 Q. And that's where you went to Mr. Perez'
23 room right before that?

24 A. It was maybe, yes, right before that. I
25 don't know the timeframe. But yeah, it was before

1 we went to yard.

2 Q. I think on your direct testimony you
3 said --

4 A. 2:30, something like that.

5 Q. Let me finish the question, okay? Because
6 it's hard to write everything down.

7 So it's about 2:30 that you went and took
8 that piece?

9 A. Probably, yes.

10 Q. Okay.

11 A. A little bit before that.

12 Q. And you didn't go out to the yard --

13 A. No.

14 Q. -- because you were making shanks?

15 A. I was making shanks.

16 Q. In your room.

17 A. In my room.

18 Q. By yourself.

19 A. By myself.

20 Q. Alone?

21 A. Alone.

22 Q. You covered the cell windows so nobody
23 could see what you were doing?

24 A. I did.

25 Q. You broke the pieces up into three pieces;

1 right?

2 A. Yes, sir.

3 Q. Sharpened them?

4 A. Sharpened two of them.

5 Q. Sharpened two of them. With the idea that
6 those two pieces were going to go to Jerry Armenta
7 and Jerry Montoya; right?

8 A. Yes, sir.

9 Q. And you called them handles, but it's just
10 putting tape around them; right?

11 A. Right. Napkins with Saran Wrap.

12 Q. So that it's easier to hold the shank?

13 A. Yes, sir.

14 Q. Because if they're holding the shank
15 without those handles and they try to stab somebody,
16 it's just going to slip?

17 A. No. But it just makes it easier.

18 Q. It could slip; right?

19 A. That's what the rope is for. It could
20 slip whether you have a handle or not.

21 Q. I understand. But a handle makes it
22 easier to handle?

23 A. That's what it's there for.

24 Q. And you sharpen it, so it's easier to stab
25 somebody with.

1 A. Of course, yes.

2 Q. You don't have to sharpen it. But it
3 wouldn't be as easy to stab somebody.

4 A. I would probably get killed if I didn't
5 sharpen it; gave them dull weapons.

6 Q. So you sharpened it, made sure they were
7 good weapons?

8 A. Right.

9 Q. And you gave both of those weapons to
10 Jerry Armenta and Jerry Montoya; right?

11 A. I did.

12 Q. So you, yourself, gave one to Jerry
13 Montoya, I think you said in your cell; correct?

14 A. Jerry Armenta came to my cell with Daniel
15 Sanchez.

16 Q. I'm sorry. You gave it to Jerry Armenta,
17 and then you gave it to Jerry Montoya after that?

18 A. I was told to go -- to let Jerry Montoya
19 know that he was going to commit the assault.

20 Q. I know you're telling the jury that that's
21 what you were told. But you're the one that
22 actually gave it to Jerry Montoya.

23 A. Yes, sir.

24 Q. And when you went into Jerry Montoya's
25 room, he got scared, too; right? He said -- he put

1 his hands up, and I think in your testimony you said
2 he thought you were going to stab him; right?

3 A. That's what I assumed.

4 Q. Okay. I mean, that was what you were
5 observing.

6 A. Right. That's what I observed.

7 Q. And then, after you hand the shanks to
8 those two folks -- or maybe it was before -- you
9 also then recruited Timothy Martinez?

10 A. Before.

11 Q. Before?

12 A. I was told -- well, yeah, my actions.

13 Q. You went to Timothy Martinez?

14 A. I went to Timothy Martinez before the 4:00
15 count. While I was sharpening the weapons and
16 breaking them down, I seen him come back from the
17 wheelchair program. I took the curtain down from my
18 window, and I put the weapons under my mattress, and
19 I told the CO to open my door. And I pulled over
20 Timothy, and started speaking to him about what they
21 wanted him to do.

22 Q. So you said to Timothy Martinez: We need
23 you to knock out Javier Molina or incapacitate him,
24 or something like that?

25 A. No.

1 Q. What did you want Timothy Martinez to do?

2 A. I told him Dan Dan wanted him to knock the
3 fuck out of Molina.

4 Q. Okay. So without the colorful language,
5 you told Timothy Martinez he needed to knock out
6 Molina?

7 A. Right.

8 Q. All right, so --

9 A. And based on -- Daniel wanted him to knock
10 him out.

11 Q. That's what you're saying.

12 A. Right.

13 Q. But you're the one who said to Timothy
14 Martinez that; right?

15 A. Yes.

16 Q. And you knew that Timothy Martinez was
17 Javier Molina's friend?

18 A. I did.

19 Q. And you were friends with Timothy
20 Martinez?

21 A. I was. And Molina.

22 Q. And Javier Molina?

23 A. Yes.

24 Q. But because of your friendship with
25 Timothy Martinez, you said to him, when you had this

1 conversation, "Hey, if you don't want to do it, I'll
2 do it for you"?

3 A. Do it for you.

4 Q. You were willing to do that?

5 A. I was.

6 Q. So that you're the one that would be
7 helping to kill Molina without Timothy Martinez
8 having to do that.

9 A. Yes, sir.

10 Q. And I think you testified about this a
11 lot, but one of the reasons you were willing to do
12 this is you said you were loyal?

13 A. Loyal.

14 Q. Loyal to Timothy Martinez?

15 A. Loyal to SNM.

16 Q. Loyal to the SNM; right?

17 A. Yes, sir.

18 Q. Okay. So after all the pieces are in
19 place, Timothy Martinez has his job, Jerry Armenta
20 and Jerry Montoya have their jobs, then you guys
21 have count; right?

22 A. No.

23 Q. So all the jobs are in place before count
24 or after count?

25 A. The only job in place before count was

1 Timothy Martinez.

2 Q. Okay. So Armenta, Montoya got their
3 jobs --

4 A. They were supposed to be told point-blank
5 at that one point they went in; want no one to
6 contemplate it. Point-blank, "Here, you've got to
7 go do this, you're going to go do it."

8 Q. And you're the one that told them.

9 A. I was the one who was directed to tell
10 them.

11 Q. You did that after count?

12 A. After count.

13 Q. So after count happens -- count starts at
14 4:00; right?

15 A. Count ends at 5:00.

16 Q. Ends at 5:00?

17 A. Yes.

18 Q. So after 5:00 --

19 A. That happens.

20 Q. You go and tell Mr. Armenta and Mr.
21 Montoya what they've got to do.

22 A. No. Armenta and Daniel Sanchez come to my
23 room. I had no interactions with Armenta. Nothing.
24 That's Daniel Sanchez' friend.

25 Q. You gave Mr. Armenta a shank, didn't you?

1 A. He came to my room. And Daniel told him
2 what he was supposed to do. He came to my room for
3 the shank with Sanchez.

4 Q. Okay. But you gave the shank to Armenta?

5 A. Gave the shank to Armenta.

6 Q. And you gave it to Montoya?

7 A. Gave it to Montoya.

8 Q. Okay. And 15 minutes later, roughly,
9 you're in Molina's room; right?

10 A. I don't know; 15 to 20 later, yeah.

11 Q. Give or take?

12 A. Yes.

13 Q. Before that happened, you testified about
14 the situation downstairs where Mr. Molina and you
15 all are talking in the day room about going up to
16 Mr. Molina's room to get high; right?

17 A. Yes.

18 Q. Isn't it true that before that, Mr. Molina
19 talked about setting up some food downstairs, to get
20 a spread, to make dinner?

21 A. There was food for a spread. There is
22 pictures of it on the discovery.

23 Q. A spread is just laying out food, like the
24 tables, so you guys can have a community meal;
25 right?

1 A. Right.

2 Q. And Mr. Molina brought that up after
3 count, didn't he?

4 A. No. I don't remember who brought it up.
5 It might have been Molina, it might have been
6 Martinez. I don't remember exactly.

7 Q. One of those two?

8 A. One of them. It's all over the discovery,
9 something about a spread.

10 Q. And when you're saying "the discovery,"
11 you're talking about like all the reports, all the
12 paperwork in the case?

13 A. Supplemental reports.

14 Q. Like the report I showed you?

15 A. Right.

16 Q. With your statement and interview.

17 A. Yeah.

18 Q. And that's all on these tablets that we're
19 talking about.

20 A. No, that was in my state case.

21 Q. Well, it's on the tablets.

22 A. Yes, it's on the tablets.

23 Q. And all the discovery in this case is on
24 the tablet.

25 A. Yes, sir.

1 Q. The tablet that you still have.

2 A. I still have.

3 THE COURT: Mr. Villa, would this be a
4 good time for us to take our afternoon break?

5 MR. VILLA: Yes, Your Honor.

6 THE COURT: All right. We'll be in recess
7 for about 15 minutes. All rise.

8 (The jury left the courtroom.)

9 THE COURT: All right. We'll be in recess
10 for about 15 minutes.

11 (The Court stood in recess.)

12 THE COURT: All right. We'll go on the
13 record. Is there anything we need to discuss while
14 Ms. Standridge is getting the jury lined up? Ms.
15 Armijo?

16 MS. ARMIJO: No, Your Honor.

17 THE COURT: How about any of the
18 defendants? Do you have any issues?

19 Ms. Bhalla said she's cold.

20 MR. LOWRY: It's freezing.

21 THE COURT: Are y'all cold? Let's see
22 what we can do. Generally, I thought with as many
23 people as have been in the room, it's been a little
24 warm. I haven't been adjusting it.

25 (The jury entered the courtroom.)

1 THE COURT: All right. Mr. Rodriguez,
2 I'll remind you you're still under oath.

3 THE WITNESS: Yes, sir.

4 THE COURT: All right. Mr. Villa, if you
5 wish to continue your cross-examination of Mr.
6 Rodriguez, you may do so at this time.

7 MR. VILLA: Thank you, Your Honor.

8 BY MR. VILLA:

9 Q. While you were in Mr. Rodriguez' and Mr.
10 Montoya's cell giving him the shank and telling him
11 what he was going to do, you told him to put his
12 greens on; right?

13 A. While I was in Mr. Rodriguez' and
14 Montoya's cell?

15 Q. Mr. Montoya's cell, giving him the shank,
16 you told him to put his greens on; right?

17 A. Yeah, I told him to put his greens on,
18 yes.

19 Q. Because of blood?

20 A. For the blood, yeah.

21 Q. And when it came time for the attack on
22 Mr. Molina, you had greens on, too; right?

23 A. I had green pants. I always wear my green
24 pants.

25 Q. To make it harder to see the blood?

1 A. No. I wear them every day.

2 Q. No, I mean, that's why you were telling
3 Mr. Montoya to do that?

4 A. Yes.

5 Q. Now, let's see if we can play Government's
6 11. I think we have to play it from over here, and
7 if we can do camera 5, please.

8 Before we get this started, Mr. Rodriguez,
9 I want to clear this up. You don't remember who was
10 talking about the spread or having a meal? And if
11 we can just pause it a second.

12 But it might have been Mr. Molina or
13 somebody else?

14 A. I think that was something they came up
15 with, their defense in the disciplinary process.
16 You know, there is --

17 Q. Well, let me ask you this: Did you --

18 A. I don't recall.

19 Q. You don't recall --

20 A. I don't recall who came up with that, who
21 said we were having a spread.

22 Q. And in response to that, did you not say
23 that you guys should go to Mr. Molina's room and get
24 high?

25 A. Yeah, that was the plan.

1 Q. But you said that to Mr. Molina?

2 A. To go to whose room?

3 Q. Mr. Molina's room?

4 A. Yeah -- no, I think it was that we were
5 running low on Suboxone. And I told him, "I bet you
6 I can get Timothy to get high with us."

7 And we always go in there to do drugs,
8 shoot up, tattoos. And I think it just fell in
9 place as part of the plan. But that was the plan,
10 to go in there, under the guise of getting high.

11 Q. My question to you, Mr. Rodriguez, is
12 fairly simple, yes or no. Did you say to
13 Mr. Molina, in response to this conversation about
14 having a meal, "Let's go to your room and get high"?

15 A. I think I did, yes.

16 Q. Okay. So you made the suggestion to go
17 get high?

18 A. Yes.

19 Q. Because you knew that when that happened,
20 you guys were going to hit Molina?

21 A. That was the plan, yes.

22 Q. Now, you said you used drugs in there a
23 lot?

24 A. In Molina's room?

25 Q. Yes.

1 A. Yes, sir, everyone uses it to do drugs.

2 Q. I'm talking about -- what drugs have you
3 used in Mr. Molina's room?

4 A. Suboxone.

5 Q. What else?

6 A. That's it.

7 Q. You shoot that up?

8 A. Yes, sir.

9 Q. You talked about wanting to get a
10 syringe -- or provide a syringe to Mr. Urquizo, or
11 something like that?

12 A. No. Before I left, I asked him if he had
13 a syringe.

14 Q. So that you could shoot up Suboxone?

15 A. So I can have access to my own syringe.

16 Q. Did you take any other drugs while you
17 were in prison down there in Southern?

18 A. Not that I can recall. I think I did meth
19 one time.

20 Q. So mostly Suboxone?

21 A. Mostly Suboxone.

22 Q. How often would you do Suboxone?

23 A. Every day.

24 Q. Every day?

25 A. Every day.

1 Q. When was the last time you used Suboxone?

2 A. It's been since the last time when I left
3 Chaparral. Maybe before we moved to SHU 3. It's
4 been close to seven months.

5 Q. Seven months?

6 A. Close to seven months.

7 Q. Any other drugs in the last seven months?

8 A. No, sir.

9 Q. And how long were you using Suboxone on a
10 daily basis?

11 A. In where?

12 Q. When did you start using Suboxone on a
13 daily basis?

14 A. When I got to Southern.

15 Q. That's the first time?

16 A. Yeah. I never used to mess with no drugs
17 at all.

18 Q. So you're telling me before that,
19 throughout your time in prison --

20 A. I wouldn't mess with heroin.

21 Q. Let me finish the question, Mr. Rodriguez,
22 please. Before you got to Southern, while you were
23 in prison, did you ever use any other drugs?

24 A. Yes.

25 Q. What drugs?

1 A. Heroin and weed.

2 Q. How often did you use those?

3 A. Up in current years, or altogether?

4 Q. Altogether, in prison.

5 A. My first maybe three to four years in the
6 North facility, I did drugs as often as they were
7 around.

8 Q. And I think there is a little bit of
9 feedback coming from your mic. It's, like, ringing.
10 Maybe if you just talk a little bit farther away.
11 It's a double-edged sword. We have to be able to
12 hear, but we're trying to cut down on the ringing.

13 Okay. So you suggested to go to
14 Mr. Molina's room to shoot up Suboxone. And that
15 was something you had done on a daily basis.

16 A. Yes.

17 Q. And that got Mr. Molina to go up to his
18 room?

19 A. Yes.

20 Q. Because he wanted to use Suboxone, too?

21 A. That's the area we used to shoot up.

22 Q. And was Suboxone provided by Timothy
23 Martinez?

24 A. I believe so, yes.

25 Q. And I think it was your testimony that

1 before the assault actually happened, you thought
2 you guys were going to shoot up first?

3 A. Right.

4 Q. And then you would do the assault?

5 A. Yes, sir.

6 Q. You wanted to get high before you did it?

7 A. Well, the initial thought I had was it was
8 going to happen right away. But when I nodded to
9 Timothy the first time, the second time, the third
10 time, he didn't do it. So I figured we were going
11 to do a shot and it was going to happen while he was
12 shooting up. I thought it was going to happen as
13 soon as we went in there.

14 Q. You were nodding to Timothy to do it?

15 A. Right.

16 Q. Right, to get Mr. Molina, get him killed?

17 A. Move on him.

18 Q. That's what you wanted to convey when you
19 nodded to Mr. Martinez three times?

20 A. Right.

21 Q. So --

22 A. Not kill him; just incapacitate him.

23 Q. Because his job was to --

24 A. That was what he was called to do.

25 Q. Let's play now channel 5 here, that you

1 have on your screen. And I don't know if you're
2 able to fast-forward to about 17:18:30 seconds.
3 We'll let it go to get to that, Mr. Rodriguez, but
4 let me ask you another question.

5 If Mr. Martinez had ultimately not done
6 his part and, say, walked out of there and tried to
7 alert the COs, and get it stopped, his life would be
8 in danger? Is that what you're saying?

9 A. It would have been in danger, yes. Mine
10 and his, yes.

11 Q. Now, but you can't control Mr. Martinez,
12 if he did that; right?

13 A. I could not, no.

14 Q. So let's play it from there. We're at
15 17:18. And we'll pause it right about 17:18:30
16 seconds and 39 (sic). Is that what you see up
17 there, Mr. Rodriguez?

18 A. What are you asking me if I see?

19 Q. If you look at the top left, where it
20 shows the time.

21 A. 17:18:30.

22 Q. Yes, sir. Is that what it says?

23 A. That's what it says.

24 Q. And 39.

25 A. 390.

1 Q. Yes, sir, sorry. 390.

2 A. Right.

3 Q. So let's go -- I think you testified --
4 and Ms. Armijo stopped it at 17:18:40 seconds, that
5 the door was -- you told the CO to leave the door
6 open; right?

7 A. Right.

8 Q. Let's run it through 17:18:40.

9 (Tape played.)

10 A. There I am right there.

11 Q. That's you coming out real quick. You've
12 got the hat on?

13 A. Yes.

14 Q. Let's pause it there, please.

15 So I just want to ask you a couple of
16 questions about that. The CO wanted to close the
17 door, because they don't like the doors being
18 opened; right?

19 A. They leave one open. But sometimes a
20 CO -- they just want to close it.

21 Q. So you said, "Leave that door open,"
22 because you knew what was happening?

23 A. Right. The door needs to be open so Jerry
24 Montoya and Jerry Armenta could come in.

25 Q. And kill Mr. Molina?

1 A. Exactly.

2 Q. That's why you wanted the door open?

3 A. That's why the door was supposed to be
4 open.

5 Q. To make sure Mr. Molina got killed?

6 A. Exactly.

7 Q. Now, let's run it again, please. And
8 we'll go to about 17:19:30. And since we have about
9 30 seconds, Mr. Rodriguez, you testified that around
10 that time the door kind of wiggles?

11 A. Yeah. There is a control center. And
12 they'll hit the button, and you can hear the door
13 jiggle. And that's pretty much saying, "Hurry up
14 whatever you're doing, because I'm going to close
15 the door." That's pretty much what they're saying
16 to you. And then you'll see -- when you do that,
17 we'll come out and tell them, "Hold on."

18 It's a routine thing in the Level 4
19 system.

20 Q. Okay. So let's watch this part here.

21 (Tape played.)

22 A. There it is.

23 Q. Why don't we pause it, please. I think we
24 saw maybe about 7 seconds ago you stuck your head
25 out?

1 A. Right.

2 Q. That was you; right?

3 A. You can see my hand, but I think my head
4 is kind of blocking it, where the CO was jiggling
5 the door again.

6 Q. So the door wiggled, yes?

7 A. Yes, sir.

8 Q. And you stuck your hand out to say, "Wait,
9 keep it open"?

10 A. Yes, sir.

11 Q. Because you knew that Jerry Armenta and
12 Jerry Montoya were coming?

13 A. That's the plan.

14 Q. To kill Molina?

15 A. Yes, sir.

16 Q. So the reason you did that was to make
17 sure Molina gets dead.

18 A. Make sure he gets stabbed. And the
19 initial goal was to kill him, yes.

20 Q. Let's continue playing this, please.

21 (Tape played.)

22 Q. Mr. Rodriguez, you saw this individual in
23 the bottom right corner? And just for the record,
24 I'm paused at 17:19:59:390; correct?

25 A. 17:19:59:390.

1 Q. Yes, sir.

2 A. Yes.

3 Q. So I just circled an individual that we
4 saw in the common area and then sort of walking out
5 of the screen. Who is that?

6 A. That's Jeffrey Madrid.

7 Q. Jeffrey Madrid. And throughout the course
8 of this video, you don't ever see Rudy Perez;
9 correct?

10 A. No, sir.

11 Q. Do you see an individual at any point in
12 time whose name is Michael Hernandez?

13 A. I do not see him. I think the camera view
14 cannot see him where he's at. I don't see him on
15 the camera view.

16 Q. There was somebody in the pod named
17 Michael Hernandez?

18 A. Yes.

19 Q. Was his nickname Polo?

20 A. I think that's what it was.

21 Q. Do you know if Mr. Hernandez was bringing
22 in drugs or selling drugs?

23 A. I do not know.

24 Q. Let's go ahead and continue the video,
25 please.

1 (Tape played.)

2 Q. Right there. Thank you. So now,

3 Mr. Rodriguez, for the record, we're at

4 17:20:06:390; yes?

5 A. Yes, sir.

6 Q. The individuals I've just circled are

7 Jerry Montoya and Jerry Armenta; correct?

8 A. Yes, they are.

9 Q. I believe it was your direct testimony
10 that you called them in because it was time; right?

11 A. When I -- when he went to the floor
12 unconscious, I turned to wave them in. They were
13 already up and coming. But that was what I was
14 supposed to be doing.

15 Q. So you waved them in so they could --

16 A. They were already up and coming, though.

17 Q. Let me finish my question.

18 A. Go ahead.

19 Q. At the point in time when Mr. Molina
20 became unconscious, isn't it true that you waved or
21 signaled to the Jerrys to come in?

22 A. Yes.

23 Q. So they could kill Molina?

24 A. Right. Stab him.

25 Q. Stab him?

1 A. Yes.

2 Q. With the shanks you made?

3 A. Yes.

4 Q. And sharpened?

5 A. Yes, sir.

6 Q. And made handles for?

7 A. Yes, sir.

8 Q. Gave to them?

9 A. Directed us to.

10 Q. So they could kill Molina?

11 A. Yes, sir.

12 Q. Let me back up just a little bit, because

13 I want to talk about the point in time where you

14 signaled to Mr. Martinez. And I think in your

15 direct testimony with Ms. Armijo, you said you heard

16 a noise. And the next thing you know, Mr. Martinez

17 is choking Javier Molina; right?

18 A. Right.

19 Q. And he eventually chokes him to

20 unconsciousness; correct?

21 A. Yes, sir.

22 Q. Is it like getting him on the sides of the

23 neck and putting him to sleep?

24 A. Exactly what it is.

25 Q. I think you testified that at one point

1 Mr. Molina was struggling and fighting?

2 A. No, he was not struggling and fighting.

3 Q. He raised his arms up?

4 A. He went to raise his arms up. Not as you
5 did, but yes, he went to raise his arms up.

6 Q. How did he raise his arms up?

7 A. He went to grab his hand -- the arm that
8 was wrapped around his neck.

9 Q. Oh, I understand. He was grabbing Mr.
10 Martinez' arm --

11 A. Exactly.

12 Q. -- trying to save himself.

13 And you pulled his arms down; right?

14 A. I grabbed him by the wrists and pulled his
15 arms down.

16 Q. You pulled Mr. Molina's arms down?

17 A. Yes, I did.

18 Q. So Mr. Martinez could do what he needed to
19 do?

20 A. So he wouldn't get any DNA of Timothy
21 Martinez' on his fingers.

22 Q. And if Mr. Molina got Mr. Martinez' arm
23 away, he might have been able to fight; right?

24 A. I would have probably got killed because
25 of the situation; I didn't do my part.

1 Q. I just want to understand. When
2 Mr. Molina was reaching for Mr. Martinez's arms, he
3 was trying to stop Mr. Martinez from choking him.

4 A. Yes.

5 Q. And you stopped Mr. Molina from doing
6 that.

7 A. I did.

8 Q. You held his arms down until he went
9 unconscious.

10 A. Yes, sir.

11 Q. So that the Jerrys could come and kill
12 him.

13 A. Exactly.

14 Q. Thank you. Okay. Let's continue rolling
15 with the tape.

16 (Tape played.)

17 Q. Let's pause it here. Mr. Rodriguez, I've
18 paused it at 17:20:25:390. Yes?

19 A. Yes.

20 Q. Mr. Martinez is right there. I just
21 circled him. He's in the middle upper tier, just to
22 the left of where it says 1-A B; is that right?

23 A. Oh, yes.

24 Q. That's Mr. Martinez?

25 A. Mr. Martinez.

1 Q. He left after the Jerrys came in and
2 started stabbing him; correct?

3 A. Yes, he did.

4 Q. But you stayed in there.

5 A. Yeah, I stayed in there. I turned around
6 to get the photo album.

7 Q. And you actually got up on the bunk in
8 Mr. Molina's room so that the Jerrys, Jerry Montoya
9 and Jerry Armenta, could do the stabbing; right?

10 A. No.

11 Q. You never got up on the bunk?

12 A. I got up against the bunk.

13 Q. Against the bunk?

14 A. With my calves. My calves are up against
15 the bunk.

16 Q. So like backed up?

17 A. Right.

18 Q. And you stayed in there?

19 A. And I stayed in there.

20 Q. And watched them stab him?

21 A. No.

22 Q. You didn't watch?

23 A. No. When they came in, I backed up with
24 my calves against the bunk. Jerry Montoya got on
25 him. Armenta came around him. I grabbed the

1 syringe and the spoon with the Suboxone. And right
2 there where you see me go back in, I'm grabbing a
3 photo album.

4 Q. And so you got the spoon and the Suboxone.
5 That's the drugs.

6 A. Spoon and Suboxone and syringe.

7 Q. And the syringe.

8 A. Yes, sir.

9 Q. And you took those?

10 A. Yes, sir.

11 Q. And you got a photo album of naked
12 pictures?

13 A. Yes, sir.

14 Q. You took those, too?

15 A. Timothy Martinez' photo album.

16 Q. Did you give that back to Mr. Martinez?

17 A. I took it to my room, and it was
18 confiscated.

19 Q. What about the syringe and Suboxone and
20 spoon?

21 A. The syringe I put in my sock, and the
22 Suboxone, if you see the picture from the top
23 shower, there will be a state-issued spoon. That
24 was a spoon to Suboxone. The Suboxone was lost in
25 the tier somewhere.

1 Q. It was lost in the tier?

2 A. Yeah, it was somewhere on the tier.

3 Because when I finished putting the weapon away in
4 the shower drain, I looked to the spoon, the
5 Suboxone was missing.

6 Q. Do you agree with me, when you testified
7 on direct, you testified that Jerry Montoya stabbed
8 Mr. Molina in the chest?

9 A. Right.

10 Q. So you saw that happen?

11 A. I saw that happen, yes.

12 Q. And you saw that happen while you were in
13 the cell?

14 A. When I leaned over to grab it, he was
15 already, like, in my peripheral right here. So I
16 leaned over. He was on top of him, stabbing him. I
17 did see him stabbing like two or three times. I
18 heard it.

19 Q. You heard it and you saw it?

20 A. I heard and I saw it.

21 Q. You didn't leave when Mr. Martinez left?

22 A. No.

23 Q. Let's keep rolling.

24 (Tape played.)

25 A. I'm grabbing the photo album.

1 Q. Let's pause it right here. Just a little
2 further. There we go. So Mr. Rodriguez, I've
3 paused it at 17:20:44:390; correct?

4 A. Correct.

5 Q. And I'm going to circle an individual who
6 is on the top tier, leaning over the top rail on the
7 left-hand side of the image; correct?

8 A. Correct. That's me.

9 Q. That's you?

10 A. Yes, sir.

11 Q. Now, you've turned around, stopped, put
12 your arm up on the rail, and you're looking into
13 Mr. Molina's cell, aren't you?

14 A. Yes, sir.

15 Q. And while you're looking in there, Mr.
16 Armijo and Mr. Montoya are stabbing Mr. Molina to
17 death?

18 A. No, sir.

19 Q. What's going on at this point?

20 A. Well, you see, when I'm coming out of the
21 cell, and you see them standing in the door frame,
22 he's already up. He's already standing up. Right
23 now they're standing to the door, and he's standing
24 in the back of the room. And they're telling him to
25 stay back.

1 Q. Oh, that's right.

2 A. Yeah, he's already up by now.

3 Q. And you testified, didn't you, on direct
4 that Mr. Montoya essentially tried to give you his
5 shank; right?

6 A. No.

7 Q. You said, "No, get him"?

8 A. I said, "Don't let him out of the room."

9 Q. "Don't let him out of the room," right?
10 You wanted them to keep him in there and kill him?

11 A. That's what the plan was.

12 Q. That's what you wanted to have happen;
13 right?

14 A. That's what the plan was.

15 Q. My question to you, sir, is: Did you want
16 that to happen?

17 A. Yeah, that's the plan. Of course.

18 Q. So the answer is yes?

19 A. Yes.

20 Q. And then I think, as we saw from the
21 video, Mr. Molina walks by, turns around, and as
22 he's going down the stairs says, "Okay, you've got
23 me, carnal"?

24 A. "All right. You got me, carnals."

25 Q. And you told him, "You're no carnal"?

1 A. "You're not our carnal. You're no
2 carnal."

3 Q. Because you wanted him dead.

4 A. Well, that's the plan. If you go to hit
5 someone in the SNM, you've got to kill them.

6 Q. You didn't try to stop Mr. Molina from
7 being killed, did you?

8 A. Why would I?

9 Q. Well, let's talk about that for a minute.
10 You just told Ms. Armijo that in the lead-up to your
11 trial, October 24, you decided you wanted to
12 cooperate and work for the Government; right?

13 A. Not work for the Government, no.

14 Q. Well, you're getting paid, aren't you?

15 A. If you call \$50 a month getting paid.

16 Q. Well, let's talk about this. You at least
17 agreed that you would testify for the Government;
18 right?

19 A. Yes, sir.

20 Q. And instead of going to trial on the Alex
21 Sosoya case, you decided to cooperate; right?

22 A. Yes, sir.

23 Q. And you testified that that puts your life
24 in danger?

25 A. Of course, yes.

1 Q. It does; right?

2 A. Yes, sir.

3 Q. The same as if you stopped the Molina hit
4 would put your life in danger; right?

5 A. Yes, sir.

6 Q. If you stopped the Molina hit, Molina
7 might get to live; right?

8 A. At this point in time?

9 Q. No, I mean, at some point in time before
10 he's stabbed in the heart.

11 A. Well, yeah.

12 Q. He might get to live; right?

13 A. Yeah.

14 Q. And maybe you could have stopped it; maybe
15 you couldn't have.

16 A. At that point in time, my mentality wasn't
17 there.

18 Q. I'm not asking about your mentality. I'm
19 talking about: You might have been able to stop
20 Molina from dying; right?

21 A. Of course.

22 Q. But your mentality before going to trial
23 in the Alex Sosoya trial changed; right?

24 A. It's been changing, but yes.

25 Q. And at the point when you were about to go

1 to trial and potentially face a very long sentence,
2 you decided to work for the Government.

3 A. Correct.

4 Q. Right?

5 A. Correct.

6 Q. And that's the point in time when you
7 decided to stop.

8 A. Stop what?

9 Q. Stop, I think as you described it, being a
10 gang member.

11 A. Yes, sir.

12 Q. You didn't make that decision before
13 Javier Molina got himself killed, did you?

14 A. It was in the process. But no, I did not.

15 Q. You could have?

16 A. Could have.

17 Q. But you didn't?

18 A. Didn't.

19 Q. And you know from the discovery, because
20 you were charged in this case, that the Government
21 had this video evidence against you; right?

22 A. Yes, I knew that.

23 Q. And as a matter of fact, before the
24 federal government indicted you and charged you with
25 Mr. Molina's murder, you were charged in state

1 court; right?

2 A. Right.

3 Q. But you were only charged with tampering
4 with evidence; is that right?

5 A. Tampering with evidence, conspiracy to
6 tamper, and possession of a weapon.

7 Q. So tampering with evidence is hiding the
8 shank; right?

9 A. Right.

10 Q. And the conspiracy to tamper was related
11 to that; correct?

12 A. Yes.

13 Q. Then I think possession of the weapon is
14 because you possessed the shanks.

15 A. Of course, yes.

16 Q. And so those charges, you would agree with
17 me, didn't carry the same kind of punishment or
18 sentence that the federal charges for the murder of
19 Javier Molina carried?

20 A. No.

21 Q. And I think you testified that the state
22 charges got dismissed when the federal charges came
23 in?

24 A. They were about to get them amended to
25 first-degree murder before the feds investigated it.

1 Q. So you were going to get charged with
2 first-degree murder?

3 A. I was going to get charged with
4 first-degree murder.

5 Q. Do you know what the punishment is for
6 first-degree murder?

7 A. It's life.

8 Q. In state court?

9 A. I don't know. I assume it's life.

10 Q. You assume that it's life?

11 A. Right.

12 Q. And the feds came and they charged you?

13 A. Right.

14 Q. And you were able to then get access to
15 all this discovery on a tablet?

16 A. Yes.

17 Q. And see the case that they had against
18 you; right?

19 A. Yes.

20 Q. You saw this video that we're looking at;
21 right?

22 A. Yes.

23 Q. You also saw some photographic evidence?
24 Did you see some of the photographic evidence that
25 the Government had, Mr. Rodriguez?

1 A. Of what?

2 Q. Of evidence in the Javier Molina murder
3 case.

4 A. Yes, I seen it long before the feds picked
5 it up, I guess.

6 Q. So let me show you Government's Exhibit
7 74. Have you seen this picture before, Mr.
8 Rodriguez?

9 A. In my state case, yes.

10 Q. You've seen it on the tablet in the
11 federal case?

12 A. Yes.

13 Q. That's a picture of your pants in the
14 sink; correct?

15 A. Yes, they are.

16 Q. So I think you testified about this on
17 direct. You got back into your room and you
18 realized that you had blood on your pants?

19 A. Right, on my right leg.

20 Q. Javier Molina's blood?

21 A. Javier Molina's blood, off the shank.

22 Q. So you put your pants into the sink and
23 tried to clean them?

24 A. I did.

25 Q. But that's where the State Police

1 investigators found your pants after you got cleared
2 out of the pod; right?

3 A. Right.

4 Q. And they found that and, in fact, you
5 learned from the discovery that there was blood on
6 those pants; right?

7 A. No, there was no DNA found on my pants.

8 Q. So there wasn't any DNA found on your
9 pants?

10 A. No, sir.

11 Q. There was DNA found in your room.

12 A. No, sir.

13 Q. Where was the DNA found?

14 A. Outside of my room, on the tier in front
15 of my cell.

16 Q. Okay. That's right.

17 A. One drop of blood.

18 Q. So there was the drop of blood in front of
19 your cell; correct?

20 A. Yes, sir.

21 Q. And I think you testified you tried to
22 wash up?

23 A. I did.

24 Q. But they found DNA?

25 A. No, they didn't find no DNA.

1 Q. I think you just said there was some DNA.

2 A. There was DNA outside my cell on the tier.

3 And I threw hand sanitizer and water out on the
4 tier. There's pictures in the discovery.

5 Q. I see. And that's where the DNA was
6 found?

7 A. Yes.

8 Q. The DNA of Javier Molina?

9 A. Yes.

10 Q. You knew that?

11 A. I didn't know whose blood it was. I just
12 knew it was blood.

13 Q. Well, you knew by the time you got the
14 discovery that the Government had that evidence
15 against you.

16 A. No, there was no blood out there. They
17 didn't pull DNA off it. They alleged that I was
18 covering blood up. They never found it.

19 Q. I see. I understand. That was right
20 outside your cell --

21 A. Right.

22 Q. -- cell 111?

23 A. What happened was, they came through with
24 the flashlight. Someone seen it. And before they
25 could take pictures of it, I threw hand sanitizer

1 and water on it.

2 Q. I see. So they find your sweats in the
3 sink?

4 A. My greens.

5 Q. Sorry, your greens in the sink, after the
6 murder?

7 A. Right.

8 Q. And then let's look at Government's 76.

9 A. With no DNA on it.

10 Q. I understand. Because you washed the
11 blood off.

12 A. Washed the blood off.

13 Q. So let's look at Government's 76. Have
14 you seen that picture before?

15 A. I have.

16 Q. That's a picture of the toilet in your
17 room?

18 A. Toilet in my room.

19 Q. With Saran Wrap in there?

20 A. The Saran Wrap is in there.

21 Q. And you knew that the Government had this
22 evidence in the case against you; correct?

23 A. What evidence is it?

24 Q. Well, it's a photograph of the toilet in
25 your room; right?

1 A. Right.

2 Q. Okay. And I think you testified about
3 where that came from, didn't you?

4 A. Why I threw it away or where it came from?
5 In my cell is where it came from.

6 Q. So on your direct testimony with
7 Ms. Armijo, you testified that that was Saran Wrap
8 from the shanks; correct?

9 A. No.

10 Q. I'm sorry, from Mr. Molina's shank?

11 A. No.

12 Q. Where did that Saran Wrap come from?

13 A. The Saran Wrap was in my room. It's
14 something that we all keep. It's from the sack
15 lunches. That Saran Wrap, I attempted to wrap up
16 the shank that Timothy Martinez gave me that was
17 Javier Molina's.

18 Q. That's right.

19 A. When I bent it on the bunk, I bent it on
20 the desk into, like, a U. I attempted to wrap it
21 up, but I was a little nervous and I couldn't get it
22 wrapped right, so I just threw it in the toilet.
23 And those toilets are stop-flushes, so when you
24 flush it more than twice back-to-back, they don't
25 flush anymore. That's why it's in the toilet.

1 Q. I got it. So after the Javier Molina
2 murder, they see the Saran Wrap in your toilet?

3 A. They assumed that it was from a weapon
4 that I was trying to get rid of in my room.

5 Q. So let me talk to you a little bit about
6 that. You said that Timothy Martinez gave you
7 Mr. Molina's shank?

8 A. Exactly.

9 Q. And he had gotten it from Mr. Molina
10 earlier; correct?

11 A. From what I understand, yes. That's the
12 only place he could have got it from.

13 Q. Well, he told you that's how he got it,
14 didn't he?

15 A. Yes.

16 Q. Told you that Mr. Molina had given it to
17 him?

18 A. He didn't tell me who gave it to him or
19 nothing. I just assumed that he went to his room
20 and took it. I didn't ask him where he got it from
21 and how he got it. I just got the bag and took off.

22 Q. And you took the shank into your room --

23 A. Right.

24 Q. -- and bent it into half?

25 A. No.

1 Q. Tell me what you did with it.

2 A. I put it in my sock.

3 Q. Put it in your sock.

4 A. Right.

5 Q. At some point you tried to wrap
6 Mr. Molina's shank with Saran Wrap; right?

7 A. At some point in time, yes.

8 Q. Tell me about that. Didn't you try to
9 bend it?

10 A. I told you I bent it.

11 Q. Okay. That's what I'm trying to
12 understand.

13 A. Okay. This is what happened. After the
14 Molina murder went down, I remembered I had a
15 syringe in my sock. So when I went down to get it,
16 I seen that I had blood on my greens. I took off my
17 greens. And when I was going to go wash them, I
18 snapped that I had Javier Molina's weapon. I pulled
19 it out of my sock. I cut the handle off. I bent
20 it, I attempted to wrap it up -- this is after the
21 Molina -- this is after they see the drop of blood
22 outside my house. This is, if you see the video
23 when I go to my room, when all the COs come in, this
24 is when they're at my door taking pictures, and I've
25 got the towel up.

1 Q. What kind of shank was it that Mr. Molina
2 had?

3 A. It was about a five-and-a-half, six-inch
4 screw to -- you know the screw that goes in
5 crutches?

6 Q. Yes, sir.

7 A. It's one of those screws.

8 Q. And you were able to bend that screw?

9 A. Yes, sir.

10 Q. Wrap it in Saran Wrap?

11 A. I didn't wrap it in Saran Wrap. That's
12 the Saran Wrap right there.

13 Q. I understand. So what did you do with the
14 shank after you bent it?

15 A. I keistered it.

16 Q. Did you put it in anything before you
17 keistered it?

18 A. No.

19 Q. And "keistering" means you put it in your
20 rectum; right?

21 A. Right.

22 Q. So you took it, put it in your rectum to
23 hide it; correct?

24 A. I did.

25 Q. And then you said you took it with you to

1 PNM, to Santa Fe; right?

2 A. Yes, sir.

3 Q. So was that, like, a souvenir?

4 A. No. It's hard to get weapons in Santa Fe.

5 When you're coming back out, you're coming out

6 without a weapon. So when you come back out you

7 have to -- it's mandatory you have weapons,

8 something I don't have to go looking for later.

9 Q. Did that screw come from the wheelchair
10 program?

11 A. No, it came from crutches, like I told you
12 before.

13 Q. From crutches.

14 A. Yes.

15 Q. Got it. So that shank stayed in your
16 rectum all the way from Southern New Mexico
17 Correctional Facility up to Santa Fe?

18 A. No.

19 Q. How long did it stay in there?

20 A. Well, they housed us in 2-A. I took it
21 out, washed up. The morning before they came for
22 us, I put it away and took it with me on transport.

23 Q. Where did you put it away?

24 A. The same place, my rectum.

25 Q. Okay.

1 A. And then I took it on transport and went
2 to Santa Fe. And I got up and took it out there.

3 Q. How many people did you use that shank on?

4 A. I threw it away.

5 Q. It's gone?

6 A. Yes, it's gone.

7 Q. Where did you throw it?

8 A. In the toilet. I flushed it in cell 3, in
9 R pod, in 3-A.

10 Q. So before you decided on October 24 to
11 cooperate with the Government, you knew about the
12 evidence we've talked about; right? I'm not talking
13 about the shank that you keistered, but some of
14 these photographs; correct?

15 A. Yes.

16 Q. Then you knew about the video; right?

17 A. I did.

18 Q. You knew that the Government had
19 identified Jerry Armenta and Jerry Montoya as the
20 people on the video who were stabbing Javier Molina?

21 A. Yes.

22 Q. You knew that the Government had
23 identified Timothy Martinez and had charged him --
24 at least the federal government had charged him with
25 the murder of Javier Molina; correct?

1 A. Yes.

2 Q. And before you decided to work for the
3 Government, you knew that Jerry Montoya was going to
4 testify against you, didn't you?

5 A. Yes.

6 Q. And you knew that Jerry Armenta was going
7 to testify against you, didn't you?

8 A. Yes.

9 Q. You knew that Timothy Martinez was going
10 to testify against you, didn't you?

11 A. Yes, sir.

12 Q. You knew all that before you made the
13 decision to join these guys.

14 A. Yes, sir.

15 Q. I think, as you told Ms. Armijo on your
16 direct, in the Sosoya case you were charged with
17 other defendants; correct?

18 A. In the Sosoya case?

19 Q. You were charged with Robert Martinez?

20 A. Yes, sir.

21 Q. Were you charged with anybody else?

22 A. No.

23 Q. You knew that Robert Martinez was
24 cooperating against you?

25 A. Yes, sir.

1 Q. You also knew, at least with respect to
2 Mr. Sosoya, there was quite a number of witnesses to
3 the attack on Mr. Sosoya; correct?

4 A. No, sir.

5 Q. Well, let's talk a little bit about that.
6 I think you said that you agreed to help Robert
7 Martinez to hit Alex Sosoya; right?

8 A. Yes, sir.

9 Q. And one of the reasons you did that, I
10 think you said, was to show loyalty to the SNM;
11 correct?

12 A. Yes, sir.

13 Q. And Mr. Martinez, at the time, was,
14 according to you, on the tabla of the SNM; right?

15 A. Who?

16 Q. Robert Martinez was on the tabla?

17 A. Yes.

18 Q. And you wanted to be on the tabla, didn't
19 you?

20 A. On the tablet?

21 Q. The tabla.

22 A. Oh, on the tabla.

23 Q. Yes, sir. I'm sorry.

24 A. I was far away from being on the tabla at
25 that time.

1 Q. But you aspired to be on the tabla?

2 A. I aspired to be a good SNM soldier.

3 Q. Did you or did you not aspire to be on the
4 tabla?

5 A. No, I did not.

6 Q. Never?

7 A. No.

8 Q. So you never said you wanted to be on the
9 tabla?

10 A. No. That's something you do not express.
11 Your brothers express that for you.

12 MR. VILLA: May I approach, Your Honor?

13 THE COURT: You may.

14 BY MR. VILLA:

15 Q. Mr. Rodriguez, do you remember the October
16 24, 2017, report?

17 A. Yes, sir.

18 Q. Written by Agent Stemo?

19 A. Yes, sir.

20 Q. And I'm showing you on page 31650, Bates
21 page, page 2 of the report; right?

22 A. Yes, sir.

23 Q. There is a section about the Alex Sosoya,
24 Chulo, assault?

25 A. Right.

1 Q. And it says down here, "Rodriguez aspired
2 to be on the tabla in the future"?

3 A. That's incorrect. I think that's a
4 misunderstanding there.

5 Q. So you're saying that Agent Nancy Stemo of
6 the FBI misunderstood you?

7 A. I think it was a misunderstanding.

8 Q. So when she wrote this down, she wrote
9 something down wrong?

10 A. I think I remember when -- expressing it
11 was that they asked me, "Why did you help him?"

12 And I said, "It's because he was on the
13 tabla, and someday, if you're on it, you don't want
14 no one speaking against you."

15 So I think that maybe got that aspirations
16 confused with my words.

17 Q. You never wanted to be a leader, a
18 llavero?

19 A. No.

20 Q. A llavero is somebody who is --

21 A. Eventually, if you're putting in the
22 work --

23 Q. Let me finish my question, sir, please. A
24 llavero is somebody who is going to be running a
25 pod, or a leader; right?

1 A. Right.

2 Q. Llaverro is like a key-holder.

3 A. Right.

4 Q. It's your testimony you didn't want to be
5 a leader like that?

6 A. Well, I'm too young for that.

7 Q. I mean ever.

8 A. Someday, yeah, that's what you put in the
9 work for.

10 Q. So you did aspire to be a leader?

11 A. That's why I was such a good carnal. And
12 you want your brothers to someday trust in you that
13 you could lead them.

14 Q. So part of helping out somebody on the
15 tabla is to one day show that you can be a leader,
16 too; right?

17 A. It's to show that if you help someone out
18 on the tabla, you have someone's voice who is heard,
19 someone who, next time you get into political
20 battle, you're going to have someone who could speak
21 to those leaders and help you out. So that's what
22 that was for. At that time, that was my first
23 initial actual hit for the SNM. So you can't aspire
24 to be something with one hit on your belt.

25 Q. And I'm not saying you did the Alex Sosoya

1 hit because you wanted to be a leader --

2 A. Right.

3 Q. -- but I want to clarify for this jury
4 that you did want to be a leader at some point.

5 A. Yeah. If you put in the work, yeah, some
6 day.

7 Q. So when Agent Stemo wrote that you aspired
8 to be a leader in the future, she wasn't wrong?

9 A. Well, I didn't say that in that interview.

10 Q. Okay. So the whole hit -- the whole issue
11 on Alex Sosoya, between Mr. Sosoya and Robert
12 Martinez, had to do with not returning a game of
13 cards and some bad drugs, or something like that;
14 isn't that true?

15 A. A game of cards?

16 Q. Sorry. A deck of cards.

17 A. I never heard that.

18 Q. Oh, I'm getting my wires crossed. It was
19 over an unreturned cassette player.

20 A. It was over a cassette player and some
21 drugs he didn't want to pay for. And the hit was
22 initially called by Arturo Garcia later on.

23 Q. So Sosoya and Martinez had a dispute about
24 a cassette player and some drugs.

25 A. It wasn't an open -- it wasn't an open

1 argument. It was that I lent him my cassette
2 player, he broke it, and he didn't want to pay me
3 back. Sosoya is complaining.

4 And Robert Martinez is complaining that a
5 Burqueno, a rival gang, sold him a small amount of
6 drugs for a high price. And Alex Sosoya took the
7 Burqueno side. And it started people gossiping
8 about it with one another, and it turned into Carlos
9 Herrera going and telling Baby Rob and Arturo Garcia
10 that Alex Sosoya --

11 MS. BHALLA: Objection, hearsay.

12 THE COURT: Are you trying to elicit this?

13 MR. VILLA: No, Your Honor, I'm not. I
14 think the question --

15 THE COURT: Why don't you ask another
16 question?

17 MR. VILLA: -- the question has been
18 answered, Your Honor.

19 BY MR. VILLA:

20 Q. So in any case, you agreed to help do the
21 hit of Mr. Sosoya?

22 A. Yes, sir.

23 Q. And I think you said that the plan was to
24 get Sosoya out to the yard and get him tired; right?

25 A. Tired, yes.

1 Q. Make him tired, play basketball, or do
2 something to get him --

3 A. That's what Robert Martinez wanted.

4 Q. But you didn't wait for that, did you?

5 A. I thought it was kind of weak.

6 Q. So you went for it right away?

7 A. Yes.

8 Q. And you stabbed him in the neck?

9 A. Right.

10 Q. With a shank that you had made?

11 A. Yes, sir.

12 Q. And I think, in the course of the
13 struggle, at some point you get Mr. Rodriguez (sic)
14 onto the ground; right? Mr. Sosoya onto the ground.
15 I apologize.

16 A. Yes, sir.

17 Q. Right?

18 A. Yes, sir.

19 Q. And I think you testified that the guards
20 start shooting rubber bullets and tear gas and other
21 things; right?

22 A. Yes, sir.

23 Q. So the guards are seeing this happen?

24 A. Yes, sir.

25 Q. That's why they're shooting?

1 A. Yes.

2 Q. So they're witnessing what's going on?

3 A. Yes, sir.

4 Q. Right. And after -- I think you said
5 early on in the assault, Mr. Martinez got hit in the
6 head with a tear gas canister; right?

7 A. Not early on, but towards the end of it,
8 yes.

9 Q. So he was out of it, and you were fighting
10 Sosoya one-on-one?

11 A. It was, like, maybe the last couple
12 minutes of it.

13 Q. So the last couple minutes of the fight,
14 it's just the two of you; right?

15 A. Yes, sir.

16 Q. And during that last couple minutes of the
17 fight, I believe you tried to gouge Mr. Sosoya's
18 eyes out?

19 A. Yes, sir.

20 Q. And you bit his ear off?

21 A. Yes, sir.

22 Q. Is biting some people's ears off something
23 you do a lot?

24 A. It's happened before.

25 Q. How many times?

1 A. Once before.

2 Q. Would you consider that your signature
3 move?

4 A. No.

5 Q. Okay. But others in the SNM might?

6 A. It's something that happens. It's
7 something they do. If that's what they told you.

8 Q. And that -- all that happens in yard, in
9 view of these COs who are shooting at you, trying to
10 get you to stop?

11 A. Yes, sir.

12 Q. And Robert Martinez, as you testified, was
13 going to testify against you?

14 A. I believe so, yes.

15 Q. Okay. So we've got more than one witness
16 who was going to testify about what happened in that
17 fight; right?

18 A. Yes, sir.

19 Q. And it's right before that trial that I
20 think you started your cooperation?

21 A. Yes, sir.

22 Q. Now, isn't it true that before you started
23 that cooperation, you had made plans, didn't you, to
24 try to attack some of the defendants in this case?

25 A. Yes, sir.

1 Q. You were going to try to attack them in
2 court; right?

3 A. One individual, yes.

4 Q. You were going to bring shanks to court
5 and try to attack that individual?

6 A. I did bring them to court.

7 Q. And as a matter of fact, you brought those
8 shanks when you came to talk to the FBI; right?

9 A. I take shanks everywhere, when I was
10 active.

11 Q. You took shanks to talk to the FBI, and
12 turned them over to the FBI, didn't you?

13 A. Yeah.

14 Q. I think you testified you took shanks
15 everywhere when you were active?

16 A. When I was an active SNM member, I took
17 shanks everywhere.

18 Q. And you took them by keistering; right?

19 A. Yes, sir.

20 Q. Putting them in your rectum?

21 A. Yes, sir.

22 Q. So you're saying you don't do that
23 anymore?

24 A. Do not do that no more.

25 Q. You don't have any shanks in your rectum

1 right now?

2 A. Want to take me to an X-ray machine?

3 Q. Not really.

4 A. Well, then --

5 Q. But you did have them the day you went to
6 talk to the FBI and ultimately worked for the
7 Government; right?

8 A. I just told you, yes.

9 Q. And you took those shanks out of your
10 rectum and turned them over to the Government?

11 A. I did.

12 Q. And told them about your plan to kill one
13 of the defendants in this case?

14 A. I was going to attempt to kill one of the
15 defendants, yes.

16 Q. All right. I'm going to show you some
17 photographs, Mr. Rodriguez.

18 MR. VILLA: May I approach?

19 THE COURT: You may.

20 BY MR. VILLA:

21 Q. Mr. Rodriguez, I'm showing you what's
22 marked as Defendants' EV. Have you seen this
23 before?

24 A. Yes, sir.

25 Q. It's a photograph of the shank that you

1 had keistered when you went to talk to the FBI?

2 A. Two shanks.

3 Q. Okay. There's two shanks in this
4 photograph.

5 A. Yes, sir.

6 Q. And does this look the same --

7 A. It's the same exact one.

8 MR. VILLA: Your Honor, move to admit EV.

9 THE COURT: Any objection?

10 MS. ARMIJO: No, Your Honor.

11 THE COURT: Any other defendant have any
12 objection? Defendants' EV will be admitted into
13 evidence.

14 (Defendants' Exhibit EV admitted.)

15 MR. VILLA: May I publish?

16 THE COURT: You may.

17 BY MR. VILLA:

18 Q. Mr. Rodriguez, that's Defendants' EV that
19 I just showed you; is that right?

20 A. The what?

21 Q. This is Defendants' Exhibit EV that I just
22 showed you?

23 A. Yes, sir.

24 Q. And this object that I've just circled
25 right in the middle looks like it has a round top.

1 That's two shanks wrapped together; right?

2 A. Yes, sir. One with the handle and one
3 just bare.

4 Q. In Saran Wrap?

5 A. In Saran Wrap in a toothpaste sheath, so I
6 could pull it out.

7 MR. VILLA: May I approach, Your Honor?

8 THE COURT: You may.

9 BY MR. VILLA:

10 Q. I'm going to show you Defendants' EW and
11 EX. Are those pictures of the shanks now taken out
12 of the toothpaste?

13 A. Those are them. Just one out of the
14 toothpaste. The other one was on top of the
15 toothpaste. So when I pull it out, the other one
16 can stay in.

17 Q. I understand. These pictures look the
18 same or substantially the same?

19 A. The same ones.

20 MR. VILLA: Your Honor, I move to admit EW
21 and EX.

22 THE COURT: Any objection?

23 MS. ARMIJO: No, Your Honor.

24 THE COURT: Any objection from the
25 defendants? Not hearing any, Defendants' Exhibits

1 EW and EX will be admitted into evidence.

2 (Defendants' Exhibit EW and EX admitted.)

3 MR. VILLA: May I publish?

4 THE COURT: You may.

5 BY MR. VILLA:

6 Q. Mr. Rodriguez, I'm showing you what's been
7 admitted as EX; correct?

8 A. Yes, sir.

9 Q. Those are the two shanks that you had in
10 your rectum when you came to talk to the FBI?

11 A. Those are them.

12 Q. How did you make those shanks?

13 A. I took a piece off the TV while I was in
14 Chaparral, New Mexico, in the Otero County Prison
15 Facility. It was a piece that was on a flat screen,
16 that keeps the flat screen stable. I took them off,
17 broke them down with a stool on my desk, and
18 proceeded to sharpen one of them and kept the other
19 one just as it was.

20 Q. Did you ever get to use this shank on
21 anybody?

22 A. No.

23 Q. Either one of them?

24 A. No.

25 Q. And just so we see what EW is, it's just

1 another picture of the same two shanks; correct?

2 A. Yes, sir.

3 Q. So your plan, at least before you decided
4 to cooperate for the Government right before your
5 Alex Sosoya trial was going to start, was to use
6 those shanks on one of the defendants in this case?

7 A. The defendant in my Sosoya indictment, not
8 this case.

9 Q. Okay. But the defendants being SNM
10 members?

11 A. Yes, sir.

12 Q. And you at that time, the time you decided
13 to cooperate with the Government, you weren't
14 particularly happy with the SNM, were you?

15 A. No, I was not.

16 Q. You were upset?

17 A. I was very upset with SNM.

18 Q. One of the reasons you were upset, were
19 you not, was that because of your criminal history,
20 you might not ever be a leader for the SNM?

21 A. No.

22 Q. That wasn't one of the reasons?

23 A. No.

24 Q. That was never a problem?

25 A. It's never been a problem.

1 Q. No one has ever questioned you about that?

2 A. No.

3 Q. So if Mr. Urquizo testified that there
4 were questions about your criminal history, that's
5 wrong?

6 A. It's never come to my attention. Maybe it
7 was behind my back, but never to my attention.

8 Q. Let me show you, Mr. Rodriguez,
9 Government's 238. Do you remember that?

10 A. Pen pack?

11 Q. Yes, sir.

12 A. Yes, sir.

13 Q. I'm flipping to -- do we have this on the
14 computer? I'm flipping to 8782, but I'm going to
15 show it to you on the computer.

16 And let's go to 8782. I think. Mr.
17 Rodriguez, you've been convicted in Counts 3, 4, and
18 5 of criminal sexual penetration, have you not?

19 A. Three and four.

20 Q. So you're not convicted anymore of Count
21 5?

22 A. No, sir.

23 Q. So let's focus, then, on Counts 3 and 4.

24 A. Yes, sir.

25 Q. Criminal sexual penetration is New

1 Mexico's rape law; right?

2 A. Yes, sir.

3 Q. I think you testified that as part of the
4 SNM, they don't allow child molesters; right?

5 A. Yes, sir.

6 Q. And also rapists?

7 A. Sex offenders, yes.

8 Q. You're a sex offender, aren't you?

9 A. No, sir.

10 Q. You don't have to register as a sex
11 offender?

12 A. Not that I'm aware of.

13 Q. So you're testifying that when you get out
14 of prison, you don't have to register as a sex
15 offender?

16 A. I don't know. I don't see it as against a
17 woman or child, so I wouldn't see why not. Why?

18 Q. It's a pretty bright-line rule that if
19 you're a sex offender, you can't be in the SNM;
20 right?

21 A. That's the thing. You're misunderstanding
22 the SNM and these charges.

23 Q. So I just want to -- first of all, I want
24 to clarify. You don't know whether you're a sex
25 offender or not?

1 A. I'm not.

2 Q. You're saying you don't have to register
3 as a sex offender --

4 A. No, sir.

5 Q. -- when you get out of prison?

6 A. No, sir.

7 Q. Even though you've been convicted of
8 criminal sexual penetration in the third degree?

9 A. That's correct.

10 Q. And this crime occurred before you were
11 ever part of the SNM; correct?

12 A. Yes, sir.

13 Q. So that's something that, if members of
14 the SNM thought you were a sex offender, could be a
15 problem for you; right?

16 A. Of course.

17 Q. It could be a problem for you in prison
18 anyway?

19 A. Yes.

20 Q. Whether you're in SNM or not; right?

21 A. Yes, sir.

22 Q. And if you went and got convicted in the
23 Alex Sosoya case, or got convicted in the Javier
24 Molina trial, you might have to go to prison for the
25 rest of your life?

1 A. Yes, sir.

2 Q. And walk around with these charges; right?

3 A. These were already out in the open.

4 Everyone knew about these.

5 Q. Well, these aren't necessarily out in the
6 open in federal prison; right?

7 A. People are getting raped in prison all the
8 time.

9 Q. But the question I have for you, Mr.
10 Rodriguez, is: If you got convicted by the federal
11 government --

12 A. Right.

13 Q. -- if you'd gone the trial and got
14 convicted --

15 A. Right.

16 Q. -- you go to federal prison; right?

17 A. Yes, sir.

18 Q. And just like in state prison, being a sex
19 offender can be a problem?

20 A. Yes, sir.

21 Q. And that could be a problem for you?

22 A. No, sir.

23 Q. Somebody could come and ask you for your
24 paperwork?

25 A. And guess what?

1 Q. Well, let me ask the questions. Okay, Mr.
2 Rodriguez?

3 A. Yes, sir.

4 Q. But if you work for the Government, you
5 might get a little more control over how much time
6 you do; right?

7 A. Right.

8 Q. And where you do your time?

9 A. Right.

10 Q. If you get convicted in the Sosoya case or
11 Javier Molina trial, you don't get that control, do
12 you?

13 A. No, sir.

14 Q. So let's talk a little bit about this.
15 You got convicted in Count 2 -- I'm just circling
16 here -- of kidnapping; right?

17 A. Yes, sir.

18 Q. And it says in here that defendant --
19 that's you, right, where it says "defendant"?

20 A. Yes, sir.

21 Q. That's referring to you?

22 A. It is.

23 Q. "Did intentionally, unlawfully take,
24 restrain, or confine John Hardy"; right?

25 A. Yes, sir.

1 Q. That's the victim in this case?

2 A. Victim in the case.

3 Q. Let me clear this out. And it says you
4 "restrained or confined John Hardy by force,
5 intimidation, or deception, with the intent to hold
6 John Hardy to service against his will, or to
7 inflict physical injury." Did I read that right?

8 A. No.

9 Q. I didn't read that right?

10 A. You skipped a sentence.

11 Q. Okay. Well, the part that I read out
12 loud, did I read that right?

13 A. Read it again.

14 Q. Okay. So I'm going to read the part
15 starting right here, "with the intent to hold John
16 Hardy to service against his will, or to inflict
17 physical injury or a sexual offense on John Hardy."

18 A. Yes, sir.

19 Q. I read that part right?

20 A. Yes, sir.

21 Q. That's what you got convicted of?

22 A. That's what I got convicted of. I pled no
23 contest to it.

24 Q. And it says, "To wit: John Hardy was held
25 in Jason Lucero's cell against his will, and

1 physical injury and sexual offenses were committed
2 upon John Hardy."

3 A. Yes, sir.

4 Q. Right?

5 A. Correct.

6 Q. By you?

7 A. No.

8 Q. Okay. Well, we'll talk about that in just
9 a minute.

10 Let's look at Count 3. That's criminal
11 sexual penetration in the third degree; correct?

12 A. That's it.

13 Q. And it says that the defendant -- that's
14 you; right?

15 A. That's me.

16 Q. "Did intentionally and unlawfully, by the
17 use of force or coercion or threats of force or
18 coercion, cause John Hardy to be penetrated to any
19 extent with a hot sauce bottle in his anal opening."
20 Right?

21 A. That's correct.

22 Q. Didn't say "aiding and abetting" in there,
23 did it?

24 A. No, it does not.

25 Q. It says that the defendant, you, did that?

1 A. Right.

2 Q. With a hot sauce bottle?

3 A. Right. That's what it says.

4 Q. And then I think Count 4 says you did the
5 same thing, this time with a lotion bottle; correct?

6 A. That's correct. That's what it says.

7 Q. And in your direct testimony with Ms.
8 Armijo, I think you testified that you didn't
9 remember that?

10 A. No, I don't remember that.

11 Q. You don't remember that?

12 A. I'm pretty sure it happened. But I don't
13 remember it.

14 Q. So you agree with me that Mr. Hardy did
15 have a lotion bottle put in his anal opening?

16 A. Yes.

17 Q. And that you were convicted of that?

18 A. I was.

19 Q. And you still stand convicted of that to
20 this day?

21 A. Yes, sir.

22 Q. But it's your testimony that you don't
23 exactly remember?

24 A. Remember what?

25 Q. Him being penetrated with a lotion bottle?

1 A. That was a long time ago. I don't really
2 recall everything. I know it was a bad case, and a
3 lot of bad stuff happened to the guy. But I don't
4 recall everything.

5 Q. Okay. I understand you don't recall. I
6 mean, that was, what, 2003?

7 A. That was a long time ago.

8 Q. That's a long time ago?

9 A. Right.

10 Q. But in 2013, you filed a habeas petition
11 for this case, didn't you?

12 A. I filed, I think, three habeases on this
13 case.

14 Q. Well, one of them you filed on, I believe,
15 May 2, 2013.

16 A. That's the most reason one, I think, yeah.

17 Q. That's most recent?

18 A. Right.

19 Q. The 2013 isn't quite as long ago, was it?

20 A. No.

21 Q. And you would agree with me that in that
22 habeas petition you admitted that you physically
23 assaulted John Hardy?

24 A. I did. I admitted to pretty much all the
25 counts in that case that I contributed to.

1 Q. You admitted that you made him snort Ajax?

2 A. I did.

3 Q. And drink urine?

4 A. I did.

5 Q. And that you "California" knocked him out?

6 A. Yes, sir.

7 Q. What's a California knockout?

8 A. A choke-out.

9 Q. So like what Mr. Martinez did to
10 Mr. Molina?

11 A. No, it's through the front, like you
12 demonstrated earlier.

13 Q. Like this?

14 A. Yes, sir.

15 Q. Okay. So you did that to him; right?

16 A. Yes, sir.

17 Q. And in your habeas petition, didn't you
18 state that inmates told Mr. Hardy to put a lotion
19 bottle in his rectum, and then you claim that he did
20 of his own free will?

21 A. I think that's Count 5.

22 Q. Did you claim that Mr. Hardy did that or
23 not?

24 A. Yeah. According to Count 5, yes, not
25 Count 4.

1 Q. Okay. But my question to you is: Did you
2 claim that Mr. Hardy did that in your habeas
3 petition?

4 A. Yes.

5 Q. So at least in 2013, you remembered
6 something about a lotion bottle?

7 A. Right.

8 Q. But you're saying you don't remember it
9 now?

10 A. Not Count 4.

11 Q. And as it stands today, you weren't
12 successful on this habeas petition; you're still
13 convicted of this sex offense?

14 A. Yes, sir. I didn't file in the federal
15 courts.

16 Q. But you don't think you're a sex offender?

17 A. No, sir.

18 Q. You don't think this is a problem for you
19 in the SNM?

20 A. Oh, it's not a problem at all.

21 Q. Now, you made a lot of claims with respect
22 to Mr. Molina trying to implicate Daniel Sanchez,
23 haven't you?

24 A. Not claims, no.

25 Q. Well, you made testimony here in court;

1 right?

2 A. Yes, testimony.

3 Q. And you said that Mr. Sanchez was a friend
4 of yours?

5 A. Was.

6 Q. Okay. And that you were, at least at one
7 point, loyal?

8 A. I was a very loyal person.

9 Q. But the things you're saying today --
10 that's not being very loyal, is it?

11 A. No.

12 Q. I'm sorry?

13 A. No, sir, not at all.

14 Q. Hard to trust somebody that's not loyal;
15 right?

16 A. Right.

17 Q. You would agree with that?

18 A. Yes, sir.

19 Q. Now, let me take you back to your plea
20 agreement in this case. And I believe that -- do we
21 have that? And Mr. Rodriguez, I'm going to go over
22 your plea agreement with you in just a minute. But
23 would you agree with me that the habeas petition in
24 your case against Mr. Hardy that you filed was for
25 ineffective assistance of counsel?

1 A. It was, yes.

2 Q. And you were saying that your attorney at
3 the time didn't advise you of something called
4 SORNA?

5 A. Right.

6 Q. And isn't SORNA the Sex Offender
7 Registration and Notification Act?

8 A. Yes, sir.

9 Q. It's the act that says that you have to
10 register as a sex offender?

11 A. That's what the SORNA says, yeah.

12 Q. Doesn't it say in your habeas petition
13 that you didn't know that you were going to have to
14 be -- to register?

15 A. My argument was that it wasn't in my J&S.

16 Q. And so you found out -- according to your
17 habeas petition, you found out from a CO that you
18 were going to have to register?

19 A. Right. That's what the allegation was. I
20 didn't know it at the time, so I went ahead and
21 started reading it. And I didn't feel that it was a
22 crime against anyone that requires that. So I was
23 saying that I wanted to pull my plea, and fight it.

24 Q. But you didn't get to pull your plea?

25 A. Didn't get to pull it, no.

1 Q. And you didn't win on the grounds that you
2 don't have to register?

3 A. I didn't win on the ineffective assistance
4 of counsel.

5 Q. But you raised ineffective assistance
6 because you said he didn't tell you --

7 A. Right.

8 Q. -- that you have to register?

9 A. Right.

10 Q. Which means you do have to register?

11 A. I guess. According to state law, I guess,
12 yeah.

13 Q. Register as a sex offender?

14 A. Right.

15 Q. So let me ask you about the state time
16 you're doing now. How much time do you have left?

17 A. I'm on in-house parole.

18 Q. What does that mean?

19 A. It means that I completed my prison
20 sentence, and now I'm on in-house parole.

21 Q. How much time do you have on in-house
22 parole?

23 A. Two years.

24 Q. So you get released in two years?

25 A. No.

1 Q. Well, for the charges that you're serving
2 time for.

3 A. Right.

4 Q. So other than your plea agreement, which
5 I'm going to talk to you about in a minute, for your
6 state case, you just have the two years of parole
7 left?

8 A. Oh, not counting the federal case.

9 Q. Not counting the federal case.

10 A. Right.

11 Q. Because you haven't been sentenced on the
12 federal case; right?

13 A. Yes.

14 Q. You don't get sentenced until after you
15 testify; right?

16 A. No, not after. After everyone is done
17 getting sentenced.

18 Q. Okay. So at some point in time, you're
19 going to get sentenced, but not yet?

20 A. Yes, sir.

21 Q. And you will be released from state
22 custody in about two years?

23 A. About maybe a year and a half.

24 Q. A year and a half and you're done?

25 A. I'm done.

1 Q. You don't have any other cases besides the
2 federal case?

3 A. I'm done.

4 Q. So setting the federal case aside, you can
5 be out in the community?

6 A. Right.

7 Q. Now, let me ask you about that plea
8 agreement, if we can pull that up. This is
9 Government's Exhibit 682, the plea agreement that
10 you entered in Mr. Sosoya's case, and the Javier
11 Molina case; correct?

12 A. Correct.

13 Q. And that's why there's two case numbers up
14 there for both cases?

15 A. Yes, sir.

16 Q. So the plea agreement took care of all of
17 the cases that you were fighting against the federal
18 government; right?

19 A. Yes, sir.

20 Q. And so other than the year and a half you
21 owe on parole, and whatever happens in this case,
22 that's all you've got on your plate; right?

23 A. That's it.

24 Q. And I think you testified on direct that
25 you're hoping for a reduced sentence; right?

1 A. Yes, sir.

2 Q. As a matter of fact, let me talk to you
3 about that. I think you said on direct that you
4 were just so happy to be out of the gang life that,
5 to be honest, it really just didn't matter.

6 A. Right.

7 Q. Okay. So let's talk about that. You pled
8 guilty to the murder of Javier Molina?

9 A. Right.

10 Q. Which is a life sentence?

11 A. Right.

12 Q. And it's mandatory life; you don't get out
13 except in a box?

14 A. Right.

15 Q. Unless you get a reduced sentence?

16 A. That's correct.

17 Q. And a reduced sentence would come from the
18 judge?

19 A. Correct.

20 Q. After the Government files a 5K motion?

21 A. Right.

22 Q. And if the Government doesn't file that 5K
23 motion, you can't get a reduced sentence?

24 A. Exactly.

25 Q. And to get that 5K, you've got to testify;

1 right?

2 A. I don't know.

3 Q. Well, you've got to help the Government,
4 don't you? You've got provide substantial
5 assistance?

6 A. I don't know the requirements of it. You
7 probably know more than I do.

8 Q. Let me ask this: You're sitting up here
9 telling this jury that you don't know what it's
10 going to take to get you a reduced sentence?

11 A. Well, I've got to cooperate with the
12 Government.

13 Q. Okay. So you know you've got to do that;
14 right?

15 A. Right.

16 Q. Let's look at the next page, please. And
17 one more over. So let's talk about the sentencing.
18 This is the sentencing in 4269, the Sosoya case;
19 right?

20 A. Yes.

21 Q. So in the Sosoya case you pled guilty to
22 imprisonment for a period of not more than 20 years;
23 right?

24 A. That's correct.

25 Q. So that means somewhere between zero and

1 20 years?

2 A. That's correct.

3 Q. And you also plead guilty to a period
4 of -- the other count in the Sosoya case for a
5 period of not more than 10 years; right?

6 A. That's correct.

7 Q. So somewhere between zero and 10 years;
8 right?

9 A. Yes, sir.

10 Q. And if you had gone to trial in the Sosoya
11 case and got convicted of these counts, you'd be
12 facing some period of time, potentially up to 30
13 years?

14 A. Right.

15 Q. But the Government has agreed to a
16 concurrent sentence, haven't they?

17 A. Right.

18 Q. Which means instead of 20 and 10, 30
19 years, it could be 20 and 10, could all be done at
20 the same time?

21 A. That's what concurrent is.

22 Q. So let's look at the next page. So now
23 we're talking about this case, the Javier Molina
24 murder; right?

25 A. Correct.

1 Q. And the term of imprisonment is for life?

2 A. Yes, sir.

3 Q. Unless, again, the Government files the 5K
4 motion?

5 A. Correct.

6 Q. And in that 5K motion, they can make a
7 recommendation to the Court about what they think
8 you ought to be sentenced to?

9 A. Okay.

10 Q. Right? I mean, you know that, don't you?

11 A. Right.

12 Q. And they're going to make that
13 recommendation, not now, but later, after the trial?

14 A. Right.

15 Q. After the outcome of this case?

16 A. Right.

17 Q. True?

18 A. Right.

19 Q. And they agreed, as you talked about, that
20 that sentence could be concurrent to the Alex Sosoya
21 sentence; right?

22 A. Yes.

23 Q. So if you'd gone to trial on October 24,
24 or around that time, instead of going to work for
25 the Government, you were facing potentially 30 years

1 for Sosoya; right?

2 A. Potentially, yes.

3 Q. And potentially life for Molina?

4 A. Right.

5 Q. And those weren't going to be concurrent;
6 those were going to be consecutive?

7 A. Consecutive.

8 Q. Right?

9 A. Right.

10 Q. And that also could have been consecutive
11 to the state time that you're doing right now.

12 A. Right.

13 Q. Because, I mean, if you're in --

14 A. My one year, what, 18 months of parole.

15 Q. So it would be concurrent to that,
16 because, otherwise, if you're in state prison and
17 you commit a new crime, the default is, it should
18 really be consecutive; it should be after that;
19 right?

20 A. Right.

21 Q. But the Government has agreed to make it
22 concurrent.

23 A. Yes, sir.

24 Q. So you've got your state time, right,
25 Sosoya and Molina all running together?

1 A. Yes, sir.

2 Q. And the sentence is going to be up to the
3 judge, but the determination that he's going to make
4 is going to be based, at least in part, on what the
5 Government says?

6 A. Yes, sir.

7 Q. You know that?

8 A. I'm aware of that now.

9 Q. Okay. And you were aware of that at the
10 time you entered this plea agreement on November
11 1st, 2017?

12 A. Yes, sir.

13 Q. When you decided at that point to save
14 yourself; right?

15 A. I guess you can call it that.

16 Q. Well, I did call it that. Would you call
17 it that?

18 A. I call it changing my life.

19 Q. Okay. So if, for instance, the Government
20 made a recommendation to you that you were going to
21 do two more years -- or excuse me, made a
22 recommendation to the Court that you would do two
23 years for Sosoya and for Molina, if they made that
24 recommendation, then you might only have to do a
25 little bit more time than what you're doing in the

1 state; right?

2 A. Right.

3 Q. I think you said you have a year and eight
4 months?

5 A. 18 months of in-house parole.

6 Q. 18 months total?

7 A. Right.

8 Q. So if they recommended two years, you'd
9 only do six more months?

10 A. I guess.

11 Q. I don't want you to guess. You understand
12 that that could happen; right?

13 A. You're saying I would only serve six more
14 months on my parole? That doesn't make sense.

15 Q. So I'm trying to understand these
16 concurrent sentences. Your sentence for the state
17 has 18 months left; right?

18 A. Yes.

19 Q. And if you got sentenced in this case and
20 the Sosoya case of 18 months, that would all be
21 concurrent to your state sentence?

22 A. Right.

23 Q. So you wouldn't do another day in prison
24 for both Sosoya and Molina?

25 A. I guess that's possible, huh?

1 Q. It is possible. And that's what you're
2 hoping for, isn't it?

3 A. Two years?

4 Q. You'd like to get out in two years, and be
5 out in the community, wouldn't you?

6 A. Now that you brought it to my attention,
7 yeah.

8 Q. That would be good?

9 A. Yeah.

10 Q. You're trying to tell this jury that this
11 just came to your attention just now?

12 A. Two years for the amount of time I'm
13 doing, the sentences? I don't know about the
14 federal system, but if they're giving me two years,
15 I'll be mighty thankful.

16 Q. You knew that it was a possibility to get
17 a substantially reduced sentence in exchange for
18 testifying, didn't you?

19 A. I was thinking more about 15 years.

20 Q. But you knew you could get a reduction in
21 your sentence; right?

22 A. Yes. Not up to two years, but --

23 Q. You just said now you were thinking about
24 15 years?

25 A. Right.

1 Q. But you said you're 33 years old.

2 A. Yes, sir.

3 Q. So in 15 years, you'd be how old?

4 A. How old will I be?

5 Q. So I don't know. Let me do the math. I
6 guess that's about 48. So if you got that kind of a
7 reduction, you could be out in the community in
8 about 15 years, before you get any good-time credit;
9 right?

10 A. Right.

11 Q. And you knew that was a possibility when
12 you decided to cooperate?

13 A. I was hoping for it, yes.

14 Q. You knew that because, as Ms. Armijo
15 pointed out, your attorney spoke to you about some
16 of these things; right?

17 A. Not two years, but yeah.

18 Q. They spoke to you about a sentencing
19 reduction?

20 A. Right.

21 Q. And gave you advice about that?

22 A. Yes, sir.

23 Q. Now, one of the things I think you
24 testified that happened, Mr. Rodriguez, was that
25 after the Javier Molina assault, you were taken to

1 PNM; correct?

2 A. Taken where?

3 Q. To PNM.

4 A. Yes.

5 Q. And put in Level 6?

6 A. I was.

7 Q. And you would describe Level 6 as solitary
8 confinement, wouldn't you?

9 A. Yes, sir.

10 Q. You were there for a long period of time,
11 weren't you?

12 A. Yes, sir.

13 Q. And you don't like being in solitary
14 confinement, do you?

15 A. You get used to it.

16 Q. But you don't like it, do you?

17 A. You get your own TV. No, I enjoy it.

18 Q. So you're okay with being in solitary
19 confinement?

20 A. So after your first three years, you get
21 used to it and you become adapted to it.

22 Q. You wouldn't have any problem being in
23 solitary confinement for the next 15 years?

24 A. Why would I be in solitary for the next 15
25 years?

1 Q. Well, let me ask you, are you okay enough
2 with solitary confinement that you could do the next
3 15 years in solitary confinement?

4 A. For what reason, though? There has to be
5 a reason. You have to go to solitary confinement
6 for a reason. If you go to solitary confinement for
7 no reason for 15 years, hell, no. I got a problem
8 with it.

9 Q. So you knew that the Department of
10 Corrections put all of the SNM members in solitary
11 confinement after Javier Molina; right?

12 A. Right.

13 Q. And you were worried, weren't you, that if
14 you got convicted in this case, you might have to
15 spend a good period of time in solitary confinement?

16 A. No.

17 Q. Well, you at least would agree with me
18 that you think that, from your cooperation, you're
19 going to get better conditions of confinement in
20 federal prison?

21 A. I don't know.

22 Q. Well, you expect it, don't you?

23 A. I haven't been in federal prison.

24 Q. You're hoping to get better federal time,
25 aren't you?

1 A. Education and -- yeah.

2 Q. Let me get back to that in just a second.

3 When you were a member of the SNM, did you ever try
4 to recruit other people into the SNM?

5 A. No, I did not.

6 Q. Never did that?

7 A. Never recruited anyone to SNM.

8 Q. And I think you talked about how you were
9 recruited to the SNM, I think it was, by Arturo
10 Garcia?

11 A. Arturo Garcia, James Yoakum, San Juan
12 Silva, and Juan Mendez.

13 Q. And they asked you to your face if you
14 wanted to be a member?

15 A. Arturo Garcia did, in 2005.

16 Q. So asking you face-to-face, that's better
17 than asking you by sending you a note or something
18 like that; right?

19 A. Yes. There is no -- you don't do that.

20 Q. Okay. But once you started working for
21 the Government, you did try to recruit for them,
22 didn't you?

23 A. I reached out to someone I consider my
24 friend, two of them.

25 Q. You tried to get people to cooperate in

1 this case, didn't you?

2 A. Two people that I think are good people.

3 Q. So the answer to my question is yes?

4 A. Yes, sir, I did.

5 Q. And I think you testified earlier that
6 you'd only had three meetings with the Government in
7 this case?

8 A. As I recall, yes.

9 Q. But you had a meeting, didn't you, on
10 November 16, 2017, with Special Agent Bryan Acee,
11 Mark Myers, Nancy Stemo, Sergio Sapien, and a person
12 named Ron Sanchez?

13 A. Yeah. I forgot about that. Yes, sir, I
14 did.

15 Q. You forgot?

16 A. That was recorded.

17 Q. That meeting was November 16, 2017?

18 A. I don't remember the date of it.

19 Q. Do you agree with me it was in November?

20 A. Yes.

21 Q. And, I'm sorry, I said 2016; it was
22 actually 2017.

23 A. It was right before Daniel's birthday,
24 yes.

25 Q. Just a couple months ago?

1 A. Yes, sir.

2 Q. But you forgot about that?

3 A. Yes, I did.

4 Q. And at that meeting you were trying to
5 recruit Ron Sanchez, weren't you?

6 A. Ron Sanchez asked me to speak to his
7 brother for him.

8 Q. Well, were you or were you not trying to
9 recruit Ron Sanchez?

10 A. No. I did a favor for Ron Sanchez.

11 Q. Did you tell Ron Sanchez that you expected
12 to get contact visits when you go to Tucson or
13 Florida?

14 A. Hell, yeah. If I'm going to go to prison.
15 I haven't had contact visits in over a decade. If I
16 have clear conduct and those are the privileges that
17 I'm able to have, yes, sir.

18 Q. So you're expecting to go to Tucson or
19 Florida federal prison; right?

20 A. Those are the prisons I think -- I don't
21 know what they are. But I think they said that --
22 something about Tucson or Florida.

23 Q. Prisons where you could go and have better
24 conditions of confinement than solitary confinement;
25 right?

1 A. I wouldn't go in solitary confinement if I
2 went into the federal system anyways.

3 Q. Well, you don't know that, do you?

4 A. I do know that.

5 Q. So if you had gone and got convicted of
6 Sosoya and convicted of Molina at trial, you know
7 for a fact that you wouldn't be in solitary
8 confinement? That's what you're saying?

9 A. I know for a fact I wouldn't.

10 Q. But you certainly know that after you've
11 been cooperating with the Government, that you can
12 go to places like Tucson or Florida?

13 A. Yes, sir.

14 Q. And those are better places to do your
15 time?

16 A. In the federal system, I hear, everyone
17 wants to do their time. Those are nongang lines.

18 Q. You said you'd never been in the federal
19 system.

20 A. No, but I --

21 Q. So you've heard.

22 A. I've heard -- I lived around the
23 federal --

24 Q. But you don't know; right?

25 A. I know inmates --

1 THE COURT: Probably what needs to happen
2 is: When Mr. Villa starts talking, you should stop.

3 THE WITNESS: Okay.

4 BY MR. VILLA:

5 Q. Okay. So Mr. Rodriguez, you've never
6 served federal time?

7 A. No, sir.

8 Q. So you don't actually know what it's like?

9 A. Yeah, I know what it's like.

10 Q. But you personally -- you don't know what
11 it's like.

12 A. No.

13 Q. You were told, when you cooperated with
14 the Government, a little bit about what it would be
15 like, didn't you?

16 A. About those prisons, yes.

17 Q. And in those prisons you get contact
18 visits?

19 A. As well as every other prison in the
20 federal system.

21 Q. Well, and a contact visit is when you get
22 to be around your family; right?

23 A. That's what all contact visits are. They
24 have contact visits in the federal system.

25 Q. I'm asking you what a contact visit is.

1 Let's talk about that. Okay? A contact visit is
2 where you get to be in a room with your family.

3 A. Yes.

4 Q. Right? Not behind a glass.

5 A. Yes.

6 Q. And when you're in Level 6, solitary
7 confinement in the state of New Mexico, you don't
8 get those contact visits, do you?

9 A. State prison.

10 Q. You don't get contact visits?

11 A. Not in state prison.

12 Q. So the answer is no?

13 A. No.

14 Q. And if you're in federal prison, having
15 cooperated, you don't have to -- as you told Ron
16 Sanchez -- worry about getting thrown in the hole;
17 right?

18 A. Because you don't have to get in trouble.
19 Do you want me to elaborate on it?

20 Q. No. Just answer my questions. Okay? The
21 hole is something you referred to as solitary
22 confinement; right?

23 A. Right.

24 Q. Now, let me take you back to when you were
25 recruited by Mr. Garcia.

1 A. Okay.

2 Q. You testified on direct examination that
3 he asked you to lay low, stay out of trouble, so you
4 could go back to a lower level of security; right?

5 A. Yes, sir.

6 Q. So that you could do some work in the
7 Level 3s in the other systems; correct?

8 A. Yes, sir.

9 Q. And that was what you were trying to do?

10 A. That's what I was trying to do.

11 Q. But you didn't.

12 A. I wasn't able to do it, no.

13 Q. You decided instead to smuggle in drugs
14 and sell drugs?

15 A. Oh, that was nonstop. That happened all
16 the time. That's how I got in trouble, though.

17 Q. Mr. Garcia told you to stay out of
18 trouble, didn't he?

19 A. That's not trouble.

20 Q. Did Mr. Garcia tell you to stay out of
21 trouble?

22 A. Yes, sir.

23 Q. And you didn't stay out of trouble.

24 A. That's not trouble.

25 Q. The answer to my question is: Yes, you

1 didn't stay out of trouble?

2 A. No, it's not yes. It's no.

3 Q. Okay. So let's talk about what happened.

4 You were selling drugs, and I think you said you
5 were bringing them in with an LC member?

6 A. Through me and another SNM member, and two
7 LC members.

8 Q. Two LC members. That's Los Carnales?

9 A. Right.

10 Q. So those are the guys that you're supposed
11 to stab on sight; right?

12 A. Right.

13 Q. And you were working with them to bring in
14 drugs?

15 A. Exactly.

16 Q. And somebody named Mr. Esparza didn't pay
17 you \$900; right?

18 A. Yes, sir.

19 Q. And I think you testified on direct that
20 you took it upon yourself to assault him; right?

21 A. Yes, sir.

22 Q. For the SNM?

23 A. Yes, sir.

24 Q. Because you didn't want to look like you
25 had been disrespected?

1 A. Right.

2 Q. So it wasn't just -- your testimony to the
3 jury is that that attack on Mr. Esparza wasn't a
4 personal issue.

5 A. It was a personal issue.

6 Q. But you did it for the SNM.

7 A. I did it because I was an SNM member.

8 Q. So it's either personal or it's related to
9 SNM. Which one is it?

10 A. I guess it's related to SNM, then; me
11 being an SNM member at the time.

12 Q. You were an SNM member at the time?

13 A. Yes, sir.

14 Q. So if you said that it was just a personal
15 issue, that wouldn't be right?

16 A. No, it wouldn't.

17 Q. Would you agree with me that when you did
18 your interview on October 24, with Agent Stemo, that
19 many SNM members -- you told her that many SNM
20 members believed that the stabbing was an incident
21 where you had earned your bones for the SNM?

22 A. Yeah, a lot of SNMers took that as me
23 earning my bones, because two of the tabla members
24 claimed that they told me to do it.

25 Q. But in fact, you did it for personal

1 reasons, not for the SNM?

2 A. Yes. At that time, I didn't disclose I
3 was an SNM member. So I was saying that to say it
4 was a personal issue. I had --

5 Q. You told Agent Stemo that it was not for
6 the SNM; right?

7 A. Right.

8 Q. It was for yourself?

9 A. Right.

10 Q. You did that for yourself?

11 A. I did.

12 Q. Just like the cooperation that you're
13 doing, you're doing that for yourself; right?

14 A. I didn't do it for any of the guys that
15 are defendants.

16 Q. You're certainly not doing it for the SNM;
17 right?

18 A. No. That seems to be the rumor, though.

19 Q. You did know at the time that you
20 cooperated that some of your good friends had also
21 cooperated; right?

22 A. Maybe two or three of my good friends,
23 yes.

24 Q. They had joined the Government?

25 A. Right.

1 Q. David Calbert?

2 A. He wasn't one of my good friends.

3 Q. Well, you knew him from Silver City;
4 right?

5 A. No.

6 Q. You didn't know him from Silver City?

7 A. David Calbert is from Silver City?

8 Q. Well, yes or no, did you know him from
9 Silver City?

10 A. No, he's not from Silver City.

11 Q. Timothy Martinez is from Silver City?

12 A. Yes, sir.

13 Q. He's a good friend?

14 A. He's a good friend, yes.

15 Q. And you knew that he had cooperated with
16 the Government?

17 A. Yeah. He consulted with me before he
18 left, yes.

19 Q. He consulted with you about cooperating?

20 A. He told me he wanted to leave, yes.

21 Q. And now you're cooperating with the
22 Government, along with your good friend?

23 A. He cooperated maybe a year ago. But,
24 yeah, we're cooperating together.

25 MR. VILLA: May I have just a moment, Your

1 Honor?

2 THE COURT: You may.

3 BY MR. VILLA:

4 Q. Let me take you back to -- you were
5 talking about after the -- the night after Javier
6 Molina was killed, or I guess it was that night.

7 A. It was that night. It was probably the
8 morning, the next morning, a.m.

9 Q. You were put in a cell over Mr. Perez;
10 right?

11 A. Yes, sir.

12 Q. Do you remember that testimony?

13 A. I do.

14 Q. And I think you testified that Mr. Perez
15 asked you -- well, let me back up. You commented to
16 Mr. Perez that it was cold; right?

17 A. Right.

18 Q. And he responded that he had brought his
19 clothes and his radio, because it was not his first
20 rodeo?

21 A. And his beanie, as well.

22 Q. And he said the words "because it's not my
23 first rodeo"?

24 A. Right.

25 Q. So you guys know, don't you, that when

1 somebody -- when something happens like this in the
2 pod, that everybody is going to get cleared out of
3 the pod?

4 A. I don't know.

5 Q. So when there is an -- in a pod, if
6 somebody gets assaulted or murdered, people are
7 going to get cleared out of the pod?

8 A. I don't know the protocol for that.

9 Q. You don't know about that?

10 A. No, sir.

11 Q. You don't know if Mr. Perez knew that?

12 A. No, sir.

13 Q. But Mr. Perez certainly knew that you came
14 into his room and took a piece from his walker?

15 A. Oh, yes.

16 Q. And he was scared; right?

17 A. No.

18 Q. Well, you told Agent Stemo that he was
19 scared.

20 A. I think that was a misunderstanding.

21 Q. I understand you're backtracking away from
22 that. But he did make a statement that, "As long as
23 it's not me"; right?

24 A. "I'm down for whatever, as long as it's
25 not me."

1 Q. When he said, "as long as it's not me," he
2 meant as long as he wasn't getting killed?

3 A. Do you want me to assume?

4 Q. Well, I don't want you to assume. I want
5 you --

6 A. Can't tell you that.

7 Q. You don't know?

8 A. I don't know.

9 Q. You don't know what he meant?

10 A. No.

11 Q. Okay. But you knew that he knew that
12 you'd taken the piece?

13 A. Yes.

14 Q. And a few hours later, Mr. Molina was
15 killed?

16 A. Yes.

17 Q. Right?

18 A. Yes, sir.

19 Q. And everybody in the pod, it's safe to
20 say, knew that Mr. Molina had been killed?

21 A. Yes, sir.

22 Q. And at some point after that happened,
23 everybody gets cleared out of the pod?

24 A. That's correct.

25 Q. Okay. So you don't know what Mr. Perez

1 meant when he said: "This isn't my first rodeo"?

2 A. Well, yeah. If you're a criminal, and
3 you're talking to another criminal, you know what
4 you're talking about.

5 Q. Okay. But he didn't tell you what he
6 meant; right?

7 A. I didn't need him to.

8 Q. Well, the question I asked you, Mr.
9 Rodriguez, is: He didn't tell you?

10 A. I know he ain't no bull-rider for sure, so
11 I don't know.

12 Q. Can you answer my question, Mr. Rodriguez?

13 A. I don't know what he meant.

14 Q. Is there some reason you don't want to
15 answer my question?

16 A. Because it's not a really smart question.

17 Q. Well, let me have you answer it, okay?

18 A. Go ahead.

19 Q. Yes or no, you did not -- Mr. Perez did
20 not tell you what he meant?

21 A. No.

22 Q. Okay. He did say that he thought he
23 wasn't going to be able to keep his clothes; right?

24 A. Say that again.

25 Q. You guys had a discussion about him losing

1 his clothes?

2 A. I told him they were going to take it from
3 him.

4 Q. He got taken out of the cell, and came
5 back in a white suit?

6 A. Right.

7 Q. Do you know that everybody in the pod got
8 put into the white suit?

9 A. I had. I had taken -- they had taken my
10 clothes from me --

11 Q. Mr. Rodriguez, that doesn't really answer
12 my question. Do you know if everybody in the blue
13 pod got put into a white suit?

14 A. I do not know.

15 Q. You don't know that?

16 A. No.

17 Q. Okay. And you certainly know that Mr.
18 Perez still had his walker; right?

19 A. Yes.

20 Q. And it was in the state that it looked in
21 Government's 89. Let look at Government's 89, if we
22 can. Do you see Government's 89 there, Mr.
23 Rodriguez?

24 A. I do.

25 Q. So when you were talking to Mr. Perez

1 through the cells that night, you said you saw him
2 walk out with the walker; right?

3 A. Say that again.

4 Q. That same night, you knew that Mr. Perez
5 had the walker, because you saw him walk out with
6 the walker?

7 A. Right.

8 Q. It looked like this?

9 A. It did.

10 Q. Right?

11 A. Without the red bar.

12 Q. Because I just put the red mark in.

13 A. Right.

14 Q. But it had these cloths on there?

15 A. Yes, sir.

16 Q. And you would agree with me that, at least
17 10 hours or some hours before that, it had a metal
18 bar there; right? A metal bar that you took away?

19 A. I can't make that estimation, but
20 somewhere --

21 Q. It was the same day; right?

22 A. -- it was the morning.

23 Q. We don't need to play games, do we?

24 A. It was the morning.

25 Q. I thought you testified that you took it

1 from Mr. Perez' walker --

2 A. Right.

3 Q. -- in the afternoon.

4 A. Yes.

5 Q. And sometime that night you're put into a
6 cell where Mr. Perez is?

7 A. Right.

8 Q. And you realize he has a walker?

9 A. Yes.

10 Q. And it's in the state that it's in in
11 Government's 89?

12 A. Yes.

13 Q. And before you took the piece of metal
14 off, it wasn't in that state; right?

15 A. Before I took the piece of metal off, it
16 didn't have the cloth on it?

17 Q. That's right.

18 A. That's correct.

19 Q. So that might draw attention to Mr. Perez,
20 wouldn't it?

21 A. Well, yeah.

22 Q. Somebody might look at that and get
23 suspicious; right?

24 A. Correct.

25 Q. So Mr. Perez was asking you if it was all

1 good with those things; right?

2 A. Right.

3 Q. Because he was worried.

4 A. He was worried.

5 Q. Now, let me show you Government's 73. Mr.

6 Rodriguez, let me show you what's already been

7 admitted as Government's Exhibit 73. This is a rope

8 that I'll represent to you was seized by the State

9 Police from --

10 THE COURT: Mr. Villa, I'm wondering if we
11 ought to take up this topic in the morning.

12 MR. VILLA: I think that's fine, Your
13 Honor.

14 THE COURT: I appreciate everybody's hard
15 work. I appreciate everybody taking breaks, getting
16 back on time, and being here in the morning. And I
17 look forward to seeing you at 8:30 in the morning.
18 Have a good evening. Appreciate it. Be safe.

19 (The jury left the courtroom.)

20 THE COURT: All right. Appreciate
21 everybody's hard work. Y'all have a good evening.
22 See you in the morning.

23 MS. JACKS: Your Honor, I'm sorry, I
24 thought the Court was going to admonish the witness.
25 I thought we discussed that at a recess.

1 THE COURT: All right. When you're being
2 held in the holding cells downstairs, don't talk to
3 any of the other witnesses.

4 THE WITNESS: All right, Your Honor.

5 THE COURT: It's not that I don't want you
6 to just talk about the case. Just don't talk to
7 them at all while you're testifying.

8 THE WITNESS: Okay.

9 THE COURT: Have a good evening.
10 Is that sufficient?

11 MS. JACKS: Thank you.

12 THE COURT: All right. Have a good
13 evening.

14 (Court stood in recess.)
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1 Thursday, February 8, 2018

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5 THE COURT: All right. Well, let's go on
6 the record. Good morning, everyone. I appreciate
7 everybody being here and on time and ready to go.
8 Is there anything we need to discuss before we bring
9 the jury in? Anything I can do for you, Mr. Beck,
10 Mr. Castellano, Ms. Armijo?

11 MR. VILLA: Briefly, Your Honor.

12 MR. BECK: Not from us, Your Honor.

13 MR. VILLA: After Mr. Beck.

14 THE COURT: I'm going to go ahead and have
15 them bring the witness up, unless there is something
16 particular to this witness.

17 MR. VILLA: No, Your Honor. But yesterday
18 we admitted Defendants' EV, EW and EX. Those were
19 black-and-white photos of shanks recovered from Mr.
20 Rodriguez. And we've replaced those with color
21 versions.

22 THE COURT: Okay. All right. Any
23 objection to that?

24 MS. ARMIJO: No, Your Honor.

25 THE COURT: Any objection from the

1 defendants? All right. So same numbers, but we'll
2 just replace them with color.

3 Did y'all see -- did anybody see Mr.
4 Rodriguez' attorney out there? Mr. Hernandez? Is
5 that his attorney? Santiago?

6 MR. VILLA: Yes, Your Honor. I haven't
7 seen him.

8 MR. LOWRY: I'll look for him.

9 THE COURT: He's wanting to talk to his
10 attorney before he comes into the room. Can y'all
11 maybe help rustle him up?

12 MS. ARMIJO: I haven't seen him. He
13 hasn't responded yet. I just now texted him. He'll
14 be here around 8:30.

15 THE COURT: We're having a little problem
16 with the monitors over there. I understand it's not
17 unique to our courtroom, but the jurors' monitors.
18 So they sent me a note and they're doing the right
19 thing with it. So I'm going to mark the note from
20 the jurors as G, and I'll talk to the jurors about
21 their monitors to make sure they know how to keep
22 them working during the trial.

23 Anything else from the Government that we
24 need to discuss? Anything else I can do for you
25 this morning?

1 MR. BECK: No, Your Honor.

2 THE COURT: How about from the defendants?
3 Do you have anything else, Mr. Villa?

4 MR. VILLA: I don't, Your Honor.

5 THE COURT: Okay. Mr. Herrera, Mr. Baca.

6 MR. LOWRY: Your Honor, we were just
7 reviewing the jury instructions last night, but I
8 take it it's a work in progress.

9 THE COURT: Yeah, I took them home, too.
10 I did work till 11:00, 11:30 last night. So I
11 probably will not get you another set today, but I'm
12 going to try to sit up here and make some progress
13 on it and have you a set in the morning. So that's
14 kind of my goal on that.

15 Did you have any thoughts as you went
16 through them?

17 MR. LOWRY: Just the absence of the
18 defenses, but I think it's something you're working
19 on.

20 THE COURT: It is.

21 MR. LOWRY: And just as evidence comes in.
22 And I detect from the email that you're still
23 working on the assault portion of the VICAR counts.

24 MR. CASTELLANO: Your Honor, Mr. Hernandez
25 is here.

1 THE COURT: All right. Mr. Hernandez. Do
2 you want to talk to your client? He wants to talk
3 to you.

4 MR. HERNANDEZ: Good morning, Your Honor.

5 THE COURT: Good morning.

6 MR. HERNANDEZ: Judge, I'll talk to him.

7 THE COURT: Is he ready to go?

8 MR. HERNANDEZ: Yes.

9 THE COURT: Is he okay?

10 MR. HERNANDEZ: Yes, Judge.

11 THE COURT: He's ready to go?

12 MR. HERNANDEZ: Yes, Your Honor.

13 THE COURT: All right, Mr. Rodriguez, did
14 you get a chance to talk to your attorney? You're
15 okay? Ready to go?

16 THE WITNESS: Yes.

17 THE COURT: Okay, all rise.

18 (The jury entered the courtroom.)

19 THE COURT: All right. Everyone be
20 seated.

21 Good morning, ladies and gentlemen. Thank
22 you for being back on time and ready to go. You've
23 been a wonderful bunch to work with on that. Y'all
24 have been super about being here and ready to go,
25 and I appreciate the attorneys and the parties as

1 well being here. Everybody has been good to get to
2 the courthouse and be here on time so we could be
3 ready to go.

4 I did have a question last night about the
5 monitors, that they're only working part of the
6 time, and you're having to unplug the HDML card and
7 plug it back in to get it to respond. We've talked
8 to IT, and this is a problem we're having throughout
9 the district. It's not so much a problem with the
10 Court's equipment. It's the vendor that I think is
11 the problem here, and so we're working with it
12 district-wide. But if you do have a problem, you're
13 doing the right thing. That's all we're doing, too,
14 is when we get that -- when we have that problem, we
15 just have to unplug it and then plug it back in to
16 get it to respond. And I take it that it is
17 responding; right? That was our test last night and
18 this morning. So just keep it up. We'll continue
19 to work with the vendor on that, but you're doing
20 the right thing, and so we'll just have to continue
21 to work with it. But we'll be monitoring it as the
22 week goes on to make sure we eliminate any problem.

23 All right, Mr. Rodriguez, I remind you
24 that you're still under oath.

25 THE WITNESS: Yes, sir.

1 THE COURT: Mr. Villa, if you wish to
2 continue your cross-examination of Mr. Rodriguez,
3 you may do so at this time.

4 MR. VILLA: Thank you, Your Honor.

5 THE COURT: Mr. Villa.

6 CONTINUED CROSS-EXAMINATION

7 BY MR. VILLA:

8 Q. Good morning, Mr. Rodriguez.

9 A. Good morning.

10 Q. I think when we left off yesterday, I was
11 going to show you Government's Exhibit 73. It's
12 already been admitted into evidence. Mr. Rodriguez,
13 this is a rope that I'll represent to you Agent
14 Rhoades of the State Police testified was found in
15 Javier Molina's room. Have you ever seen that rope
16 before?

17 A. No, sir.

18 Q. Let me show you the actual rope itself.

19 MR. VILLA: May I approach?

20 THE COURT: You may.

21 BY MR. VILLA:

22 Q. Mr. Rodriguez, I'm showing you
23 Government's Exhibit 4 which has already been
24 admitted into evidence as the same rope as in the
25 picture.

1 A. Okay.

2 Q. You have never seen that before?

3 A. I don't recall seeing that before.

4 Q. So Mr. Rodriguez, you didn't take that
5 rope with you into Mr. Molina's room when you were
6 going to help kill him?

7 A. No, sir.

8 Q. Now, you would agree with me when you did
9 the -- tried to do the hit on Alex Sosoya, you did
10 take a rope with you that time; right?

11 A. I did, sir.

12 Q. You had it in your shoe?

13 A. Yes, sir.

14 Q. And during the fight with Mr. Sosoya, you
15 were trying to take that out to use it?

16 A. Robert Martinez was trying to take it out
17 of my shoe.

18 Q. So he could strangle him?

19 A. So I can get his hands and tie them behind
20 his back, yes.

21 Q. To tie Mr. Sosoya's hands --

22 A. Right, yes.

23 Q. -- behind his back so you could kill him?

24 A. So we can continue to assault him, yes.

25 Q. Let me ask you about the shank that was

1 found in your shoe.

2 MR. VILLA: May I approach again, Your
3 Honor?

4 THE COURT: You may.

5 BY MR. VILLA:

6 Q. So Mr. Rodriguez, you remember
7 Government's 746?

8 A. I do.

9 Q. That was your shoe?

10 A. That was my shoe.

11 Q. And inside the shoe is where the shank
12 was?

13 A. Yes, sir.

14 Q. And you remember Government's Exhibit
15 746-A?

16 A. Which one is it?

17 Q. I'll show you here on the monitor.

18 A. That's the weapon that was in my shoe.

19 Q. That's the weapon in your shoe; correct?

20 A. Yes.

21 Q. When you described that weapon -- let's
22 see if I can get it in the box -- would you describe
23 that as an icepick?

24 A. Yes, sir.

25 Q. What's an icepick?

1 A. I think it comes from people who make ice,
2 to stab into the ice. That's just a description of
3 a thin shank.

4 Q. It's not necessarily from an icepick?

5 A. No, sir.

6 Q. That's the way you describe it?

7 A. That's the way --

8 Q. Hang on, Mr. Rodriguez, just so it's
9 easier for the court reporter, and so that you
10 understand my question.

11 A. Okay.

12 Q. That's the way you guys describe a thin
13 shank?

14 A. Yes, sir.

15 Q. Is that right?

16 A. Yes, sir.

17 Q. Now, this particular shank that was in
18 your shoe -- that's evidence related to the Molina
19 case, isn't it?

20 A. It was evidence inside the Molina case,
21 yes. Those were the shoes I was wearing the day of
22 the Molina case.

23 Q. Did you use this shank on Mr. Molina?

24 A. I never used that shank before.

25 Q. Never used it on anybody?

1 A. No, sir.

2 Q. Did you have it with you when you went to
3 Mr. Molina's room?

4 A. In my shoe, yes.

5 Q. Just in the shoe?

6 A. Yes, sir.

7 Q. But you didn't take it out?

8 A. No, sir.

9 Q. We talked, Mr. Rodriguez, a little bit
10 about your drug use when you were in the blue pod
11 and you said you used Suboxone daily; correct?

12 A. Yes, sir.

13 Q. Didn't you also use meth?

14 A. I used meth on occasion, yes.

15 Q. Meth is methamphetamine; right?

16 A. Yes, sir.

17 Q. When was the last time you used
18 methamphetamine?

19 A. I think that was the last time -- or the
20 first time I used methamphetamine in the last 16
21 years.

22 Q. When was that?

23 A. When I was in blue pod.

24 Q. In blue pod. And can you tell me the
25 month or the date?

1 A. I can't tell you the month or the date.

2 Q. Did you use it on the day of Mr. Molina's
3 murder?

4 A. No, sir.

5 Q. But you were using it at that time?

6 A. About maybe two months prior to the Molina
7 murder, yes.

8 Q. And you said on occasion. What's "on
9 occasion" to you?

10 A. What did I say occasion to?

11 Q. You would you used meth on occasion?

12 A. On one occasion, yes.

13 Q. Only one time?

14 A. One time. I used it -- I think it was
15 approximately four or five days straight.

16 Q. While you were in blue pod?

17 A. While I was in blue pod, yes.

18 Q. Now, we talked a little bit about you not
19 being happy with the SNM; correct?

20 A. That's correct.

21 Q. And one of the things that you aren't
22 happy about was, you thought that a lot of the
23 people in SNM were overweight, out of shape; right?

24 A. I think that's -- no, that's not true.

25 Q. So you didn't think that was a problem

1 with the SNM?

2 A. If they are, I don't know what that would
3 be a reason to be mad at the SNM for.

4 Q. Well, you thought a lot of folks were not
5 keeping good care of themselves, not staying in
6 shape, not being good soldiers?

7 A. No, that's not what I was upset with the
8 SNM over.

9 Q. Well, you certainly were upset because
10 some of the people you looked up to had gone and
11 joined the Government; right?

12 A. I think one person I looked up to joined
13 the Government, yes.

14 Q. That being Gerald Archuleta?

15 A. I did look up to Gerald Archuleta. I
16 didn't have the relationship I did with him as I did
17 with Robert Martinez.

18 Q. Okay. So let's do this one at time. You
19 looked up to Gerald Archuleta. Yes?

20 A. Not through a personal relationship, but
21 through his history of putting in work, yes.

22 Q. Putting in work for the SNM?

23 A. Yes.

24 Q. Do you know that Gerald Archuleta is
25 working for the Government?

1 A. I didn't believe it at the time, but yes,
2 I know now.

3 Q. You knew that before you went to work for
4 the Government.

5 A. I still didn't want to believe it at that
6 time.

7 Q. But you knew it?

8 A. I was told it, yes.

9 Q. And you saw it in discovery on your
10 tablet, didn't you?

11 A. I did -- the last time the tablet was
12 updated, I did see it.

13 Q. And you saw that before you went on
14 October 24 to talk to the Government and cooperate;
15 right?

16 A. I did.

17 Q. And I think you said you looked up to
18 Robert Martinez?

19 A. I did.

20 Q. Is that Robert Martinez who helped you
21 with the Alex Sosoya hit?

22 A. Yes, sir.

23 Q. And Mr. Martinez was cooperating against
24 you, wasn't he?

25 A. Correct.

1 Q. He was going to testify against you?

2 A. That's correct.

3 Q. You didn't like that?

4 A. I always came from the idea that I
5 understood why they left. I never held nothing
6 against them for it.

7 Q. Well, let me ask you this: You also
8 looked up to an individual, Juan Baca?

9 A. I don't even know Juan Baca.

10 Q. You don't know any Juan Baca?

11 A. Do you know how old I am?

12 Q. I'm asking you a question, Mr. Rodriguez,
13 whether you knew --

14 A. I never heard of Juan Baca until I read
15 the tablet.

16 Q. Let me finish my question before you do
17 your answer. Okay?

18 So your answer is: You never heard of
19 Juan Baca until you read the tablet?

20 A. Then and other carnals started telling me
21 about him at that time.

22 Q. You understood that Juan Baca was a leader
23 in the SNM?

24 A. From what I understand is, he's the one
25 that created the SNM.

1 Q. You understood that he also talked to the
2 Government?

3 A. He didn't talk to the Government. He did
4 a debrief.

5 Q. A debrief?

6 A. Yes.

7 Q. To Government officials.

8 A. I've never seen it.

9 Q. But you heard about it?

10 A. There's allegations, yes.

11 Q. And remember when we talked yesterday
12 about the meeting that had slipped your mind, but it
13 occurred November 16, 2017, when you went to see Ron
14 Sanchez?

15 A. Right.

16 Q. And you were there with Agent Acee?

17 A. I was.

18 Q. And a number of other individuals involved
19 in this case?

20 A. Yes, sir.

21 Q. And you talked to Ron Sanchez, didn't you,
22 about how the SNM was going to lose power because of
23 the federal indictment?

24 A. Right.

25 Q. And that was one of the reasons you were

1 trying to persuade him to work for the Government?

2 A. That's incorrect.

3 Q. Well, you agree you told him that about
4 the SNM going to lose power.

5 A. Eventually, yes. But that wasn't the
6 reason why I was persuading him to go. I was there
7 at his request.

8 Q. So you also told him, didn't you, Mr.
9 Rodriguez, that there's people in the SNM that are
10 overweight, and all these guys are fat and
11 overweight. You mentioned that to Mr. Sanchez?

12 A. If you could play the recording. I don't
13 recall that. I believe that there's a few
14 individuals that I disliked that were overweight,
15 yes.

16 Q. So you agree that you had that issue with
17 some individuals?

18 A. One individual.

19 Q. Just one?

20 A. Yes.

21 MR. VILLA: Your Honor, may I approach?

22 THE COURT: You may.

23 MR. VILLA: Your Honor, I'm going to email
24 Ms. Armijo a copy of this transcript that we just
25 received a couple of days ago.

1 THE COURT: Okay.

2 BY MR. VILLA:

3 Q. Just to set the stage a little, Mr.
4 Rodriguez, you agree that one of the things you were
5 talking to Mr. Sanchez about was working for the
6 Government?

7 A. One of the things that I spoke to him
8 about was working with the Government?

9 Q. Yes or no?

10 A. Who worked with the Government?

11 Q. Mr. Sanchez?

12 A. If he wanted to?

13 Q. Yes.

14 A. That's what he was there for. He wanted
15 to.

16 Q. So you talked to him about that?

17 A. Yes, I was there at his request.

18 MS. JACKS: Just so we're clear, we're
19 speaking about Ronald Sanchez; correct?

20 THE WITNESS: That's correct.

21 BY MR. VILLA:

22 Q. So Mr. Rodriguez, I'm showing you a
23 document called "Transcript of me", right?

24 A. Right.

25 Q. And it says, "FBI Agent Bryan Acee, Mark

1 Myers, Nancy Stemo, Sergio Sapien, Mario Rodriguez,
2 and Ronald Sanchez"; right?

3 A. Right.

4 Q. Dated November 16, 2017?

5 A. Yes, sir.

6 Q. That's the same date you had that meeting?

7 A. That's the same day.

8 Q. Everybody I just read there was there at
9 that meeting?

10 A. They were present, yes.

11 Q. So I'm going to flip over to page 24, and
12 this is you talking to Ronald Sanchez. And you say,
13 "You know, their name isn't, fuck (indiscernible).
14 You've got Arturo. He's 50 now, overweight like a
15 motherfucker. All these guys are fat and
16 overweight."

17 Did I read that right?

18 A. Yes.

19 Q. You said that to Ronald Sanchez?

20 A. I said that to Ronald Sanchez.

21 Q. Mr. Rodriguez, I didn't do this yesterday,
22 but I'd like to show you the judgments from your
23 criminal cases.

24 MR. VILLA: Your Honor, I'm going to mark
25 these as AK-1, -2, and -3. They're certified

1 copies. I've shown them to Ms. Armijo. I'm not
2 certain whether she intends to object.

3 THE COURT: Any objection, Ms. Armijo?

4 MS. ARMIJO: No. Part of them may be
5 cumulative, because I believe this is part of the
6 pen pack that we admitted yesterday. So I do not
7 oppose this. It's just cumulative.

8 THE COURT: All right. Any of the
9 defendants object to it?

10 MS. JACKS: No, Your Honor.

11 THE COURT: All right. So Defendants'
12 Exhibit AK-1, AK-2, and AK-3 will be admitted into
13 evidence.

14 (Defendants' Exhibits AK-1, AK-2, and AK-3
15 admitted.)

16 MR. VILLA: May I approach? Actually, I
17 can do it from the document viewer.

18 BY MR. VILLA:

19 Q. So Mr. Rodriguez, can you see there on
20 your screen Defendant's Exhibit AK-1?

21 A. Say again?

22 Q. Can you see on your screen Defendants'
23 AK-1?

24 A. I see it.

25 Q. And that's a judgment and commitment for

1 you; correct?

2 A. The same one we went over yesterday, yes.

3 Q. And that's the one from June 2, 2004;

4 correct?

5 A. Yes, sir.

6 Q. And we went over this yesterday. It had
7 in there the kidnapping, and three counts of
8 criminal sexual penetration, as well as these other
9 charges, right?

10 A. And the fifth count was dismissed, but
11 yes, there's three counts there.

12 Q. Okay. So let me show you Defendants'
13 Exhibit AK-2. This is an amended judgment and
14 commitment in the same set of cases; right?

15 A. Let me see. I believe so.

16 Q. And I'll flip over to the second page of
17 that document. Now, it shows your convictions but
18 it doesn't have Count 5.

19 A. That's correct.

20 Q. So it still has Count 3 and Count 4;
21 correct?

22 A. As I told you, yes.

23 Q. And so it has Count 3, criminal sexual
24 penetration with a hot sauce bottle on Mr. Hardy?

25 A. That's correct.

1 Q. And Count 4, criminal sexual penetration
2 with a lotion bottle for Mr. Hardy; correct?

3 A. That's correct.

4 Q. And I think you testified on direct a
5 little bit about this. You said that you had
6 Mr. Hardy in a cell for a period of days and were
7 using his commissary money?

8 A. I had him moved from his designated cell
9 to another individual's cell, yes. Not my cell, but
10 another individual.

11 Q. You kept him in there so you could use his
12 commissary money?

13 A. The inmate that was in his cell kept him
14 in there.

15 Q. Well, you helped with that; you got
16 convicted of kidnapping.

17 A. No, the convicted kidnapping is from the
18 night that incident occurred.

19 Q. Okay. I see. So was Mr. Hardy, while he
20 was in this cell for a period of days, free to
21 leave?

22 A. Yes. But the individual followed him
23 everywhere.

24 Q. Was he being tortured while he was in the
25 cell by you and others?

1 A. Not by me. Others, yes. He was getting
2 assaulted.

3 Q. You deny you were torturing him?

4 A. At that time, yes.

5 Q. At some point you were torturing him?

6 A. At that point I held a razor blade to his
7 neck and I threatened him.

8 Q. So that happens in 2004; correct?

9 A. I think in '03.

10 Q. Excuse me. 2003; right?

11 A. Yes, that's correct.

12 Q. And I think you testified that you got to
13 Santa Rosa in -- was it 2005?

14 A. In 2005.

15 Q. And that's when you beat the CO with a
16 soda can in a sock?

17 A. Yes, three COs.

18 Q. Three of them?

19 A. Yes, sir.

20 Q. And that is Defendants' Exhibit AK-3. You
21 were convicted of aggravated battery on a peace
22 officer, a couple of counts; right?

23 A. Yes, sir.

24 Q. And that's related to that case?

25 A. Two aggravated batteries and one battery,

1 yes.

2 Q. So then later you -- I think it was 2011
3 when the assault on Alex Sosoya occurred?

4 A. That's correct.

5 Q. Well, I think I forgot the year. When did
6 you assault Robert Esparza?

7 A. In 2008.

8 Q. 2008. So 2005, Santa Rosa; 2008, Robert
9 Esparza; 2011, Alex Sosoya; correct?

10 A. And 2003, John Hardy.

11 Q. 2014, Javier Molina; is that right?

12 A. Yes, sir.

13 Q. And as we talked about yesterday, right
14 before you cooperated or went and worked for the
15 Government, you were going to attack one of the
16 defendants in this case; correct?

17 A. Not in this case.

18 Q. Well, charged in by the federal
19 government?

20 A. Yes, sir.

21 Q. And that was one of the reasons why you
22 were bringing shanks in your rectum to court;
23 correct?

24 A. Amongst other reasons, yes.

25 Q. And so after all that, you then go to work

1 for the Government October 24, 2017; right?

2 A. Yes.

3 Q. And we talked about what you told the
4 Government yesterday, October 24 -- in your
5 testimony yesterday we talked about what you told
6 the Government on October 24, 2017; right?

7 A. That's correct.

8 Q. And I showed you how you said to Agent
9 Stemo -- or at least Agent Stemo wrote down that you
10 said Mr. Perez was in fear when you took the piece
11 from his walker?

12 A. I don't recall those exact words, but I
13 think you said -- I think you said that I said he
14 was scared.

15 Q. So do you want to take a look at it since
16 you don't recall?

17 A. Yes.

18 MR. VALLE: May I approach?

19 THE COURT: You may.

20 BY MR. VALLE:

21 Q. So Mr. Rodriguez, remember the October 24,
22 2017, report that I showed you yesterday?

23 A. Yes, sir.

24 Q. So I'm going to flip over to page 6 of
25 that report; right?

1 A. That's correct.

2 Q. And you talked about, right here in this
3 first paragraph, "Perez appeared scared and stated
4 that he was down for whatever, 'as long as it was
5 not me' "?

6 A. That's correct.

7 Q. And so you're telling this jury that you
8 never told Agent Stemo that Perez appeared scared?

9 A. I don't remember saying that.

10 Q. So you don't remember it?

11 A. I don't believe I did.

12 Q. I'm sorry, I didn't catch your answer.

13 A. I don't believe I told them that.

14 Q. Okay. And then I asked you yesterday
15 about what that statement meant. And you said,
16 "Well, I don't know. Do you want me to speculate?"

17 Do you remember that?

18 A. Oh, about him being -- not his first
19 rodeo?

20 Q. No, the statement that I just read to you.

21 A. No, you didn't ask me to speculate on
22 that.

23 Q. But you did tell Agent Stemo what you
24 thought that meant, didn't you?

25 A. I told him I don't think --

1 Q. It's yes or no, Mr. Rodriguez. Did you
2 tell Agent Stemo what you thought that meant?

3 A. I don't remember.

4 Q. If I showed you this, would that help you?

5 A. Yes.

6 MR. VALLE: May I approach again?

7 THE COURT: You may.

8 BY MR. VALLE:

9 Q. So Mr. Rodriguez, right after that
10 statement, "I'm down for whatever, as long as it
11 wasn't me," it says, "Rodriguez" --

12 MS. ARMIJO: Objection, Your Honor. The
13 witness wanted to review it to refresh his
14 recollection.

15 MR. VILLA: Your Honor, I'm refreshing his
16 recollection.

17 THE COURT: I think you can put it in
18 front of him and let him look at it.

19 BY MR. VILLA:

20 Q. Mr. Rodriguez, will you read this sentence
21 to yourself, please?

22 A. Okay.

23 Q. Okay. Does that refresh your
24 recollection?

25 A. Yes, it does.

1 Q. And so didn't you say that you understood
2 that statement to mean that Perez did not want to be
3 hurt and would go along with the hit if he did not
4 otherwise have to be involved?

5 A. That makes sense, yes.

6 Q. Now, you said yesterday that you didn't
7 make this statement to Ms. Stemo, and you're saying
8 today you don't remember making that statement;
9 true?

10 A. That's incorrect.

11 Q. So --

12 A. Yesterday you asked me if I made the
13 statement that I aspired to be on the tabla.

14 Q. I'm not asking about that.

15 A. That's the question you asked me
16 yesterday.

17 Q. Okay. Mr. Rodriguez, I'm asking you about
18 my question I asked you yesterday about whether you
19 told Agent Stemo that Mr. Perez appeared scared.
20 And your testimony yesterday was that you didn't say
21 that.

22 A. Right. That's what I said yesterday.

23 Q. And your testimony today is you don't
24 remember?

25 A. I don't remember.

1 Q. Correct?

2 A. I don't think I said that he was scared.

3 That's what I'm saying.

4 Q. All right. This particular report, the
5 one I just showed you --

6 A. Right.

7 Q. -- you had a chance to review this report,
8 didn't you?

9 A. I have not.

10 Q. Never?

11 A. No.

12 Q. That's your testimony?

13 A. That's my testimony. I don't think I
14 reviewed that one.

15 Q. So Mr. Rodriguez, you testified yesterday
16 that you had had a couple of meetings with the
17 Government; right?

18 A. I think I did review that one on October
19 24, very quickly. I think I did.

20 Q. Mr. Rodriguez, my question to you was that
21 yesterday you testified that you had two meetings
22 with the Government; right?

23 A. I said around three, I think.

24 Q. Okay. And you remembered that the
25 third -- well, there was an additional one with Mr.

1 Sanchez where you went to go see him; right?

2 A. That's one that you brought to light
3 yesterday, yes.

4 Q. The second meeting that you had with the
5 Government was on November 1, 2017; right?

6 A. That's when I reviewed that, yes.

7 Q. Okay. So on November 1, 2017, you
8 reviewed the October 24, 2017, statement that I just
9 showed you; right?

10 A. Yes, I did.

11 Q. And when you read it, you clarified some
12 of the details in this report; right?

13 A. I think I did. I don't remember.

14 Q. Well, if Agent Acee said that you
15 clarified the details, would you disagree with him?

16 A. No, I would not.

17 Q. Do you still not remember when you got to
18 clarify the details of that report?

19 A. I think I wrote notes down clarifying what
20 certain things meant, being that I didn't elaborate
21 on certain comments.

22 Q. And so you wrote notes down on that
23 report, the October 24 report; right?

24 A. Not on that report. While I was being
25 housed in another facility prior to me going and

1 pleading guilty, I wrote notes down as to --
2 sometimes I forget I'm talking to civilians and not
3 prisoners. So when I speak, I automatically think
4 they understand what I'm saying.

5 Q. Okay. So you wrote some notes?

6 A. Yes, to clarify things.

7 Q. But you don't disagree that you got to do
8 that after reading Agent Stemo's October 24, 2017,
9 report?

10 A. Say that again.

11 Q. You do not disagree with me that you got
12 to write your notes down after reading Agent Stemo's
13 October 24, 2017, report?

14 A. Yes, I disagree with that.

15 Q. You disagree with that?

16 A. Yeah.

17 Q. So let me ask: When did you write your
18 notes down?

19 A. I wrote notes down when I left October 24,
20 and in between the time I took the plea of guilty on
21 November 1st, I think.

22 Q. And on November 1st --

23 A. It wasn't notes.

24 Q. Mr. Rodriguez, answer my question. So
25 don't give an answer until I ask another question.

1 Okay?

2 A. Okay.

3 Q. So on November 1st is when you got to
4 review Agent Stemo's report?

5 A. That's correct.

6 Q. And that was before you got to meet with
7 Agent Acee on November 1st?

8 A. That's correct.

9 Q. And you had an opportunity to clarify the
10 details in Agent Stemo's report with Agent Acee?

11 A. That's correct.

12 Q. And Agent Acee then writes a report of the
13 November 1st, 2017, meeting with you that's
14 approximately 11 pages long; correct?

15 A. Right.

16 Q. And nowhere in that report does he say
17 that you clarified that you didn't tell Agent Stemo
18 Mr. Perez was in fear?

19 A. I did not -- I think it's in the notes I
20 wrote.

21 Q. Well, let me get you to answer my
22 question. Okay, sir? I'm talking about the
23 November 1st, 2017, report that Agent Acee wrote.
24 The report that Agent Acee wrote of your November
25 1st meeting.

1 A. Right.

2 Q. Okay. You've read that report; right?

3 A. I have.

4 Q. And that report is 11 pages long?

5 A. I don't know.

6 Q. If I showed it to you, would you know?

7 A. Yes.

8 MR. VILLA: May I approach?

9 THE COURT: You may.

10 BY MR. VILLA:

11 Q. Mr. Rodriguez, I'm showing you the report
12 by Agent Acee; right?

13 A. Correct.

14 Q. And it says about a meeting on November
15 1st, 2017, with you; right?

16 A. That's correct.

17 Q. And the report is actually dated November
18 20; right?

19 A. It is, yes.

20 Q. That's when Mr. Acee finished the report?

21 A. All right.

22 Q. And it says it's 11 pages long?

23 A. Okay.

24 Q. Doesn't it?

25 A. Yes.

1 Q. You've read this before?

2 A. Yes, I read the draft of that, yes.

3 Q. And you've read the final version, haven't
4 you?

5 A. I have not.

6 Q. It's on your tablet, isn't it?

7 A. No, it's not.

8 Q. It's not. But you read the draft?

9 A. I read the draft, yes.

10 Q. And you agree with me that in the draft it
11 doesn't say, "I never said that to Agent Stemo on
12 October 24 about in Perez being in fear"?

13 A. No, I did not clarify that in that draft.

14 Q. You never did?

15 A. No.

16 Q. And you remember me asking you yesterday
17 about solitary confinement?

18 A. I do.

19 Q. Would you agree with me that in solitary
20 confinement people get paranoid?

21 A. Yeah. That's one of the symptoms of
22 solitary confinement.

23 Q. And people can develop significant
24 psychological and social problems?

25 MS. ARMIJO: Objection, foundation.

1 THE COURT: Why don't you lay a
2 foundation?

3 BY MR. VILLA:

4 Q. Well, Mr. Rodriguez, you know from your
5 time in solitary confinement that you can develop
6 significant psychological and social problems?

7 A. I've studied it, yes.

8 Q. And you've experienced it yourself,
9 correct? Solitary confinement?

10 A. I've experienced solitary confinement,
11 yes.

12 Q. So you agree while you're in solitary
13 confinement, there's other inmates next to you,
14 sometimes on either side or above you; right?

15 A. That's correct.

16 Q. And they're in solitary confinement, too?

17 A. That's correct.

18 Q. So from your experience, you know that
19 inmates can develop significant psychological and
20 social problems?

21 A. From what I've studied, yes.

22 MS. ARMIJO: Objection, foundation.

23 THE COURT: Sustained.

24 BY MR. VILLA:

25 Q. Now, after the trial started -- the trial

1 started on January 29. Opening statements were
2 given on Wednesday, January 31. You had another
3 meeting with the Government on February 3, 2017,
4 didn't you?

5 A. What's the date today?

6 Q. Today, I believe, is the 8th.

7 A. That was on Saturday.

8 Q. I'm losing track of time. I believe
9 Saturday was February 3.

10 A. That's the day, yes.

11 Q. That's when you met with the Government?

12 A. Last Saturday?

13 Q. I think that's what you testified
14 yesterday.

15 A. Yes. I don't keep track of the dates very
16 well, but yes.

17 Q. This past Saturday?

18 A. Yes.

19 Q. You met with Ms. Armijo?

20 A. Yes.

21 Q. Is that correct?

22 A. That's correct.

23 Q. And Agent Stemo was there again; right?

24 A. I do not remember that. If she was, she
25 wasn't in the room I was in.

1 Q. Have you met with the Government anytime
2 since that past Saturday?

3 A. Since last Saturday?

4 Q. Yes, sir.

5 A. No, sir.

6 Q. And a report was made following your
7 meeting with the Government?

8 A. I don't know.

9 Q. You'd agree with me that at that meeting
10 on February 3, you didn't say, "Hey, Agent Stemo,
11 you got it wrong on October 24 about Mr. Perez being
12 in fear" when you took the piece from his walker?

13 A. No, but they asked me if I had stated he
14 was scared, and I said I didn't remember that.

15 Q. So Ms. Armijo asked you that?

16 A. Yes.

17 Q. That was after the opening statements in
18 this case?

19 A. They asked me if I recalled him being
20 scared at the time. I told him "I don't remember."

21 Q. My question to you, Mr. Rodriguez --

22 A. Yes.

23 Q. -- is you know that that question was
24 asked of you after opening statements were made in
25 this case?

1 A. I believe so.

2 Q. Now, all of sudden, you've changed what
3 you told Agent Stemo?

4 A. How did I change it?

5 Q. Agent Stemo wrote that you said Mr. Perez
6 was in fear. Now you're telling the jury that
7 didn't happen?

8 A. Yeah, but not based on Saturday.

9 Q. Well, you certainly gave your testimony
10 yesterday after Saturday; right?

11 A. Right.

12 Q. After you met with the Government?

13 A. That's correct.

14 Q. You agree with that?

15 A. That's correct.

16 MR. VILLA: May I have a moment?

17 THE COURT: You may.

18 MR. VILLA: No further questions, Your
19 Honor.

20 THE COURT: Thank you, Mr. Villa.

21 Mr. Jewkes, Ms. Jacks, do you want to go
22 next?

23 MS. JACKS: Your Honor, I think we're
24 last.

25 THE COURT: Okay. Ms. Bhalla.

1 CROSS-EXAMINATION

2 BY MS. BHALLA:

3 Q. Good morning, Mr. Rodriguez.

4 A. Good morning.

5 Q. Mr. Rodriguez, you testified yesterday
6 that you weren't going to hit Javier Molina until
7 the paperwork came down; is that correct?

8 A. That's correct.

9 Q. Okay. And in fact, you testified that you
10 told David Calbert that you wouldn't hit him until
11 he brought paperwork down; is that right?

12 A. That's incorrect.

13 Q. Did you testify that you needed David
14 Calbert to bring the paperwork?

15 A. That I notified Mauricio Varela and Lupe
16 Urquizo that I was to let Calbert know, when he
17 shows up, that I'm not going to hit him without the
18 paperwork.

19 Q. Okay. And the gist of that, Mr.
20 Rodriguez, is that you told everybody you weren't
21 going to hit him without the paperwork; is that fair
22 to say?

23 A. That's fair to say.

24 Q. But you did try to hit him before you say
25 the paperwork came down, didn't you?

1 A. I don't recall that.

2 Q. You don't recall. Do you recall your
3 interview with Special Agent Acee on October 24 of
4 2017?

5 A. Yes, sir -- yes, ma'am.

6 Q. Okay. And in that interview you told
7 Agent Acee --

8 MS. ARMIJO: Your Honor, I'm going to
9 object that she's misstating the interviews.

10 THE COURT: Well, I'll let you work with
11 that on redirect. Overruled.

12 Ms. Bhalla.

13 MS. BHALLA: Thank you, Your Honor.

14 BY MS. BHALLA:

15 Q. Let me rephrase that. I think that might
16 be fair. You met with Agent Stemo on October 24 of
17 2017; is that correct?

18 A. That's correct.

19 Q. Okay. And you told Agent Stemo that
20 before any paperwork came down, you ordered or tried
21 to convince Efrain Martinez to murder Javier Molina?
22 Didn't you tell her that?

23 A. And Timothy Martinez, yes.

24 Q. Okay. You tried to convince both of
25 them --

1 A. Right.

2 Q. -- to murder Javier Molina?

3 A. Right.

4 Q. And you did that, you said, because you
5 were high on meth. Is that fair to say?

6 A. I don't recall that at that time, but I
7 was probably high on meth at that time, yes.

8 Q. So you don't disagree that that's what you
9 said to Ms. Stemo?

10 A. No.

11 Q. Okay. You provided testimony in this case
12 that you had the discovery since when? 2015; is
13 that right?

14 A. Since the rest of the defendants.

15 Q. Okay. When was that?

16 A. I don't recall what the date.

17 Q. I'm not asking for a specific date.

18 A. I've had it for the past two years.

19 Q. So you've had discovery in this case for
20 two years?

21 A. When you guys issued the discovery, I
22 received it with the same defendants.

23 Q. So you've read some of that discovery,
24 haven't you?

25 A. I pretty much read all of it.

1 Q. You read all of it. And in fact, when you
2 had some of these meetings with the Government or
3 with the agents in this case, you took the
4 opportunity to correct some of the discovery, didn't
5 you, or what you thought were mistakes in the
6 discovery?

7 A. I probably brought up some mistakes, yes.

8 Q. Okay. And in October, the October 24
9 meeting with Ms. Stemo, you told her that you had
10 reviewed some of the statements that Mr. Armenta
11 made; is that correct?

12 A. That's correct.

13 Q. And you told her that Armenta's statement
14 that you were asking for paperwork wasn't true?

15 A. It was not true.

16 Q. Okay. You were asking for a syringe;
17 right?

18 A. I was asking for a syringe at the door,
19 yes.

20 Q. So you knew the discovery well enough that
21 you could point out what was wrong in the discovery
22 to the agents; is that fair to say?

23 A. Due to my involvement in the case, yes.

24 Q. Okay. Part of the discovery in this case
25 contains statements by Carlos Herrera; is that fair

1 to say?

2 A. In the case?

3 Q. Yes.

4 A. Statements that he made?

5 Q. Yes.

6 A. Not that I'm aware of.

7 Q. You're not aware of any statements that my
8 client made in the discovery?

9 A. To the FBI?

10 Q. No, to other people, to other people in
11 this case.

12 A. To other defendants?

13 Q. Yeah.

14 A. You would have to explain to me what
15 you're talking about.

16 Q. I'd have to explain to you what I'm
17 talking about? Do you recall your debrief in
18 November of 2017?

19 A. On October 24?

20 Q. Yes.

21 A. Emotional time. But yes, I recall most of
22 it. Yes, I was in a little bit of distress.

23 Q. Okay. And you talked to -- I believe it
24 was Special Agent Acee about some of the discovery
25 that you read in this case; is that right?

1 A. On October 24?

2 Q. No, on November 1st.

3 A. That's correct.

4 Q. And you told Agent Acee that you were
5 frustrated or angry with Carlos Herrera because he
6 said things about you that weren't very nice?

7 A. Oh, on the wiretaps?

8 Q. Yeah.

9 A. That's correct.

10 Q. Okay. And you also mentioned it when you
11 met with Ronald Sanchez, didn't you?

12 A. That's correct.

13 Q. And I believe -- and correct me if I'm
14 wrong -- that you told Ronald Sanchez that he said,
15 'Blue ain't worth a fuck. He's a bitch, this and
16 that.'" Did you tell that to Ronald Sanchez?

17 A. Yeah, I probably did. If it's on the
18 wiretap, that's what he said about me.

19 Q. Okay. You didn't like that, did you?

20 A. Well, he was my carnal. He was someone I
21 respected. And I didn't expect that from someone
22 behind my back.

23 Q. So is it fair to say you were pretty mad
24 when you read that?

25 A. I was shocked when I listened to it, yes.

1 Q. Okay. And the gist of some of those
2 statements --

3 MS. ARMIJO: Objection, hearsay.

4 MS. BHALLA: Your Honor, it's not being
5 offered for the truth of the matter asserted. It's
6 being offered to prove bias.

7 THE COURT: Let's see what the question is
8 first. Then I can determine what the answer may be.

9 MS. BHALLA: Thank you, Your Honor.

10 BY MS. BHALLA:

11 Q. The gist of those statements were that you
12 were in blue pod, high on meth; right?

13 A. No.

14 Q. No?

15 A. Not that I recall, that everyone was high
16 on meth. He was upset that he didn't get no
17 methamphetamine.

18 Q. You were in the blue pod; right?

19 A. Yes.

20 Q. And he told Mr. Archuleta that you --

21 MS. ARMIJO: Objection, hearsay.

22 THE COURT: Well, if you're soliciting
23 your own client's statements, sustained.

24 BY MS. BHALLA:

25 Q. That you were over there --

1 MS. ARMIJO: Objection, hearsay.

2 Q. -- high on meth?

3 THE COURT: You can't elicit your own --

4 MS. BHALLA: I'm sorry, Your Honor. I
5 thought you --

6 MS. ARMIJO: Your Honor, I move to strike
7 that.

8 MS. BHALLA: That's fine. I have no
9 objection.

10 THE COURT: Well, it's just a question.
11 I'll sustain the objection.

12 BY MS. BHALLA:

13 Q. The discovery that you read wasn't very
14 flattering to you, was it?

15 A. Transcripts?

16 Q. Yeah.

17 A. I didn't read no transcripts of Carlos
18 Herrera. It was audio.

19 Q. Okay. So you listened to the audio?

20 A. I listened to the audio.

21 Q. And it wasn't very flattering, was it?

22 A. I guess not, huh?

23 Q. I guess not.

24 MS. ARMIJO: Was that a question or a
25 comment by counsel? I'd ask --

1 THE COURT: I think it's a sufficient
2 question. I'll allow it. Overruled.

3 BY MS. BHALLA:

4 Q. You testified that you came to court with
5 shanks; is that correct?

6 A. I went everywhere with shanks, yes.

7 Q. You went everywhere with shanks. And you
8 informed Agent Acee that you felt that Carlos
9 Herrera in those statements was acting like he was
10 somebody that he wasn't; isn't that true?

11 A. That's correct.

12 Q. And in fact, you said, "That's not really
13 who he was. Talking to Styx like somebody. That's
14 not him. He's never done anything."

15 A. He hasn't.

16 Q. Okay. And because of that and because of
17 those statements, you planned to murder Carlos
18 Herrera on the transport van, didn't you?

19 A. Along with other defendants, yes.

20 Q. I'm not asking what other defendants did.
21 I'm asking what you did.

22 A. I was a part of the plot, yes.

23 Q. You were part of the plot. And what did
24 that plot entail you doing, Mr. Rodriguez?

25 A. I --

1 MS. ARMIJO: Your Honor, may we approach?

2 THE COURT: You may.

3 (The following proceedings were held at
4 the bench.)

5 MS. ARMIJO: I just want to make this
6 clear that she's now opened the door to that plot,
7 and that plot involved officially Mr. Daniel
8 Sanchez, so she's opening this door. We feel it's
9 already opened, and now Mr. Sanchez -- he would
10 testify that -- I believe he was the one that came
11 up with this plot; that it was all the co-defendants
12 in this case. Specifically most of them involve,
13 most importantly, Mr. Sanchez, Dan Sanchez.

14 MR. CASTELLANO: I think it's a little
15 late. The door has been opened and we're going to
16 drive right through it. That's coming in.

17 MS. BHALLA: Your Honor, there is the
18 statements that Mr. Rodriguez made that he was
19 hatching a plot to murder my client based on the
20 testimony that he read or based on the statements
21 that he read. It goes to bias. His testimony was
22 that he has had a change of heart, he's cooperating
23 with the Government. It's not true. And the whole
24 security issues that we've been dealing with in this
25 court are because of Mr. Rodriguez and his plan to

1 murder my client on the transport van. I don't see
2 how that opens the door to trying to prove someone
3 else was involved in the plot when their witness has
4 admitted that he was responsible for that.

5 THE COURT: Do you have anything to say on
6 this? I think I can actually sort of cabin this
7 thing.

8 MS. JACKS: Certainly this has nothing to
9 do with bringing this topic up. It's something that
10 is inappropriate.

11 THE COURT: Why don't you do this? I
12 think for the present time just lead him through
13 this. Let's not see if we need to get Mr. Sanchez
14 involved.

15 MS. BHALLA: I have no intention of doing
16 that.

17 MR. CASTELLANO: At this point they're
18 going to use this as a sword and a shield. They're
19 going to say, "We only want to know what you did,
20 Mr. Rodriguez." There are other people involved in
21 that plot.

22 THE COURT: I may allow that. I think I
23 can allow Ms. Bhalla to impeach him, but try to ask
24 leading questions and don't let him get Mr. Sanchez
25 involved. We'll take it one at a time.

1 MS. JACKS: Your Honor, I would object.

2 THE COURT: I note the Government's
3 position, but I'm not sure that it needs to be
4 opened up there. If you want to open it up that
5 he's trying to kill your client, I don't think
6 that's the case. But I think --

7 MS. JACKS: I think what the Government is
8 saying is that Mr. Sanchez was involved.

9 THE COURT: They are, but --

10 MS. JACKS: My concern is this line of
11 questions is just inviting an outburst involving Mr.
12 Sanchez in some uncharged crime that we have
13 actually no additional information on, other than
14 just what this witness said.

15 MS. BHALLA: The problem is, Your Honor,
16 that Mr. Herrera --

17 THE COURT: Hold on. Officer, could you
18 bring Mr. Rodriguez right over here?

19 You need to talk right here.
20 Mr. Rodriguez, she's going to ask you about this
21 plot. She's going to ask you some leading
22 questions.

23 THE WITNESS: Okay.

24 THE COURT: So just answer the questions,
25 answer them truthfully.

1 THE WITNESS: Truthfully.

2 THE COURT: If you can't answer them
3 truthfully without giving more information, say "I
4 can't answer it."

5 THE WITNESS: Okay.

6 THE COURT: If you can answer yes or no,
7 she's going to lead you through it.

8 THE WITNESS: Just --

9 THE COURT: I'm not interested, unless the
10 question calls for an answer, you talking about
11 Mr. Daniel Sanchez.

12 THE WITNESS: Okay.

13 THE COURT: So she's going to try to ask
14 you questions that don't require you to mention him
15 as being part of this plot, if he was a member of
16 the plot. I don't know if he was or not.

17 THE WITNESS: Okay. So exclude him from
18 it, if he was?

19 THE COURT: You've got tell the truth.

20 THE WITNESS: Okay.

21 THE COURT: So if you can't answer the
22 question truthfully without mentioning Mr. Sanchez,
23 then just say --

24 THE WITNESS: Don't answer? So they ask
25 me a question, the answer --

1 THE COURT: We're just trying to keep you
2 from just dropping his name, is what -- if you can
3 avoid dropping his name just completely --

4 THE WITNESS: And if I can't answer, just
5 say no?

6 THE COURT: If you can't be truthful, say,
7 "I can't answer truthfully" because --

8 THE WITNESS: Because I can't incorporate
9 him?

10 THE COURT: Yeah.

11 THE WITNESS: Okay.

12 THE COURT: You don't want to mention his
13 name. She's going to try to lead you. If you can't
14 answer that truthfully, given the Court's
15 instruction --

16 THE WITNESS: I don't think I understand
17 when -- if he's a part of the plot, and the plot
18 is -- involves him and I can't answer it, do that.

19 THE COURT: If you can't answer it
20 truthfully, you tell her, "Given what the Court
21 said, I can't answer that question truthfully."

22 THE WITNESS: And say, "The truth is that
23 Daniel Sanchez is involved, so I cannot incorporate
24 it"?

25 THE COURT: Don't drop that in unless she

1 calls for it. And I don't think she's going to call
2 for it.

3 THE WITNESS: Okay.

4 THE COURT: She may ask for other people.
5 She may ask for Carlos Herrera. She may ask those
6 questions. I don't think she's going to ask that
7 question. But if it requires you to say Mr.
8 Sanchez, if she does, say, "I can't answer the
9 question."

10 THE WITNESS: Okay. I understand.

11 MS. ARMIJO: Can we make sure that he says
12 "I can't answer that question based on the Court's
13 ruling"?

14 THE COURT: That's fine. You can say,
15 "based upon what the Court's ruling."

16 THE WITNESS: Okay.

17 MS. BHALLA: Your Honor, just for the
18 record, I'm going to do my best to be careful for my
19 questions. But just for the record, my client does
20 have a right to put on a defense.

21 THE COURT: He does.

22 MS. JACKS: Perhaps the remedy is to sever
23 Mr. Sanchez.

24 THE COURT: We won't do that. If
25 necessary, he may have to say Mr. Sanchez is part of

1 the plot. It's not the end of the world. That's
2 his testimony.

3 MS. JACKS: That may be your view, but
4 it's certainly not Mr. Sanchez'.

5 THE COURT: But if it's the evidence, it's
6 the evidence.

7 MR. CASTELLANO: Your Honor, here's the
8 problem, is that the questions are misleading and
9 the answers will be misleading, because Mr. Herrera
10 said a number of disrespectful things about other
11 members of the SNM in this thing. So it wasn't just
12 tailored towards Mr. Rodriguez.

13 As a result of disrespect shown toward
14 multiple members, multiple members conspired to
15 murder him on the transport van. But the problem
16 with this at this point, now that she's opened the
17 door, is the jury is not going to get the full
18 picture of -- it's not just focused --

19 THE COURT: Juries often don't get the
20 full picture. Let's see if we can avoid it being
21 false, misleading. Be careful.

22 MR. CASTELLANO: We're asking now --

23 MS. BHALLA: And Your Honor, the issue
24 here is Mr. Rodriguez' state of mind and bias.

25 THE COURT: I think that's the reason I'm

1 trying to limit it here. That's why we're going to
2 get this testimony in, and I think it's --

3 MR. BECK: Your Honor, the testimony is
4 that he's a good soldier. He was close with Mr.
5 Sanchez. Mr. Sanchez and him came up with this
6 plot. Mr. Sanchez directed him to go and do this as
7 a soldier. I mean we've heard from even defense
8 counsel that he was the torpedo, so saying that --
9 painting a picture for this jury that he was going
10 to hit Mr. Herrera without explaining that he was
11 doing it for the S at Daniel Sanchez's direction
12 paints a false impression with the jury as to what
13 the evidence is.

14 THE COURT: Well, it's Ms. Bhalla --

15 MS. JACKS: I join in Mr. Beck's comments.
16 We're begging for a mistrial and extreme prejudice
17 by allowing this line of questioning.

18 THE COURT: It's Ms. Bhalla's questions.
19 You've got your marching orders. Let's see if you
20 can carry it out.

21 MR. VILLA: On behalf of Mr. Perez, we
22 would object to the extent Mr. Rodriguez is not
23 permitted to answer questions about this, because I
24 think it does go to his bias, and that would affect
25 Mr. Perez.

1 I'd also like to know from the Government
2 whether they believe Mr. Rodriguez would include Mr.
3 Perez in this conspiracy, so that I know what record
4 I need to make right now.

5 THE COURT: All right. We'll take that up
6 at a break.

7 (The following proceedings were held in
8 open court.)

9 THE COURT: All right, Ms. Bhalla.

10 BY MS. BHALLA:

11 Q. Mr. Rodriguez, I'm going to ask you about
12 some statements that you made to Mr. Acee. Okay?

13 A. Yes, ma'am.

14 Q. About what you told him was going to
15 happen on the transport van.

16 A. Yes, ma'am.

17 MS. ARMIJO: Your Honor, and could she ask
18 the question as opposed to just reading the
19 statement?

20 MS. BHALLA: Your Honor, I'm trying to
21 keep it narrow.

22 THE COURT: All right. I'll give Ms.
23 Bhalla a little leeway. Overruled.

24 BY MS. BHALLA:

25 Q. You stated to Agent Acee that the plan was

1 to use a sock to strangle Carlos Herrera; correct?

2 A. In the transport van, that's correct.

3 Q. And you told Agent Acee that when the van
4 doors would be opened, there would be a dead guy; is
5 that fair?

6 A. That's fair.

7 Q. Okay. And you were referring to my
8 client, Carlos Herrera?

9 A. Yes, I was.

10 Q. And you told Agent Acee that in November;
11 correct?

12 A. Yes. On the day of my plea.

13 Q. Yeah, after you had had the change of
14 heart to become a better person; right?

15 A. Right.

16 Q. That's right.

17 MS. BHALLA: Your Honor, may I have a
18 moment?

19 THE COURT: You may.

20 MS. BHALLA: I don't have any other
21 further questions, Your Honor.

22 THE COURT: Thank you, Ms. Bhalla.

23 Mr. Lowry, do you have cross-examination
24 of Mr. Rodriguez?

25

1 CROSS-EXAMINATION

2 BY MR. LOWRY:

3 Q. Good morning, Mr. Rodriguez.

4 A. Good morning, sir.

5 Q. We've been talking a lot about a tablet
6 today, and do you recognize this?

7 A. Yes, I do.

8 Q. And what is this?

9 A. That's the discovery of everything to do
10 with the RICO VICAR case against SNM.

11 Q. And all of the discovery in the case was
12 downloaded on this portable computer; correct?

13 A. I don't know if all of it was, but the
14 majority.

15 Q. Okay. Do you have any reason to believe
16 that some of the discovery was left out?

17 A. Of mine, yes.

18 Q. Why is that?

19 A. Because I wasn't there for the updated --
20 the last update. My 302s ain't in there. There is
21 a little bit of stuff that ain't in there.

22 Q. But through the time until October 24 --

23 A. Right.

24 Q. -- of 2017, you'd had all the discovery on
25 this tablet?

1 A. All the discovery available at that time,
2 yes.

3 Q. And you were living in the Department of
4 Corrections?

5 A. No.

6 Q. So you didn't have time to review it?

7 A. No, I wasn't living in the Department of
8 Corrections.

9 Q. Well, you were incarcerated?

10 A. Yes.

11 Q. And all day long you had access to this to
12 review the discovery?

13 A. All day long. They would take it from us
14 I think at nighttime to charge, and then we would
15 have it. At first there was a lot of restrictions
16 on it, but towards the end, they would allow us to
17 have it and charge it for, like, three or four
18 hours.

19 Q. So my point is: You had ample opportunity
20 to review everything that was on this tablet.

21 A. I did.

22 Q. And there are tens of thousands of pages
23 of documents on this tablet.

24 A. I believe so, yes.

25 Q. And there was over 10,000 hours of

1 recorded conversations on this tablet?

2 A. That's correct.

3 Q. And there were videos on this tablet?

4 A. There was videos.

5 Q. Probably I don't know how many, but a
6 significant number of videos?

7 A. A large amount, yes.

8 Q. And you reviewed all of that?

9 A. That's correct.

10 Q. Okay. And you had an opportunity to even
11 review the video of the assault you talked about
12 with Robert Esparza in 2008?

13 A. That's correct.

14 Q. And you're familiar with that video?

15 A. Well, yeah, I'm in the video.

16 Q. And the video is a true and accurate
17 depiction of what happened during the assault?

18 A. It is.

19 MR. LOWRY: Your Honor, we've marked for
20 identification purposes two exhibits, Defendants'
21 AK-4 and Defendants' AK-5. We'd move them into
22 admission.

23 THE COURT: Any objection, Ms. Armijo?

24 MS. ARMIJO: Yes, Your Honor. May we
25 approach?

1 THE COURT: You may.

2 (The following proceedings were held at
3 the bench.)

4 THE COURT: What are these exhibits?

5 MR. LOWRY: These are videos of the
6 assault on Mr. Esparza. And they just go to show --
7 again, this comes back to bias, motivation to
8 testify favorably for the Government. These are the
9 charges that he pled guilty to, and quite frankly
10 they're disturbing, violent.

11 THE COURT: What is it?

12 MS. ARMIJO: Your Honor, this is the
13 incident that he has admitted to now several times
14 back in -- before he was an SNM Gang member. And
15 he's already admitted to it. There is no proper
16 purpose. It's not an SNM-related hit and it's just
17 404(b). That's highly inflammatory. If this were a
18 sanctioned SNM hit, I think it would be different.
19 But this is -- this is why he is an SNM member. But
20 I think it still comes up to --

21 THE COURT: How does it hurt you, though,
22 if you're trying to establish racketeering activity?
23 Wouldn't this help establish your case?

24 MR. BECK: It may be. But it doesn't
25 change the fact that it's still 404(b). The only

1 purpose --

2 THE COURT: Well, a lot of evidence has a
3 propensity. But you're offering it. Give me a
4 non-404(b) --

5 MR. LOWRY: It goes to bias and
6 motivation. He's under indictment.

7 THE COURT: Why does it show -- tell me
8 how, if it's in front of the jury, you can argue
9 that it goes to bias and prejudice.

10 MR. LOWRY: This is one of his pending
11 charges.

12 MS. ARMIJO: No, it's not one of his
13 pending charges. It's --

14 MR. LOWRY: Pardon me. They've been using
15 it to demonstrate racketeering.

16 THE COURT: Why do you want it?

17 MR. LOWRY: I don't. He's actually been
18 equivocal about it. He said that it wasn't -- he
19 wasn't an SNM member during the time of this
20 assault.

21 THE COURT: It's hard for me -- this isn't
22 relevant. I'm a little confused why one side is
23 wanting to put it in and not the other. If they
24 want to put it in, it seems like it helps the
25 Government.

1 MR. BECK: I agree. I'm saying it's not
2 admissible because it's 404(b).

3 THE COURT: If they want to establish
4 racketeering activity, that's relevant. It's got a
5 non-404(b) purpose.

6 MR. LOWRY: Your Honor, it goes to
7 impeachment, as well.

8 THE COURT: How so?

9 MR. LOWRY: Because he didn't describe it
10 accurately. He said this happened out on the yard,
11 and he made it sound like it was a fair fight.

12 THE COURT: Well, I'll let you play it.

13 (The following proceedings were held in
14 open court.)

15 THE COURT: All right. Do any of the
16 defendants have any other objections?

17 MR. VILLA: No.

18 THE COURT: All right. Defendant's
19 Exhibits AK-4 and AK-5 will be admitted into
20 evidence.

21 (Defendants' Exhibit AK-4 and AK-5
22 admitted.)

23 THE COURT: All right, Mr. Lowry.

24 BY MR. LOWRY:

25 Q. While she's pulling that up, this was

1 something that was part of your life for those two
2 years, between the time you were charged and October
3 24?

4 A. It was a significant part. I was in the
5 process of defending my life against the Government.

6 Q. And you still have access to this?

7 A. I still have access to it. I don't use it
8 as often as I used to, but I still have access to
9 it.

10 Q. Okay. Now, do you recognize this pod?

11 A. That's PNM Level 6, North facility, U pod.

12 Q. Can we stop this for a second so I can put
13 a time signature on it?

14 And on AK-4, we're looking at channel 12,
15 and the date is March 4, 2008?

16 A. That's correct.

17 Q. And the time stamp is 8:47:26:125?

18 A. Yes, sir.

19 Q. Now, on your direct testimony I think that
20 you said this happened out in the yard?

21 A. 2011 happened in the yard.

22 Q. Right.

23 A. And this happened in the pod.

24 Q. In the interior of the pod. And this
25 happened -- actually, it started in the shower

1 stall; correct?

2 A. Yes. I was in the shower.

3 Q. And in fairness, what we'll see is, you
4 hid in the shower?

5 A. Yes, I did.

6 Q. And I want to explain to the jury the
7 process, when you're in Level 6, to get to the
8 shower, you actually -- you start in your cell?

9 A. That's correct.

10 Q. And to exit the cell, you have to -- there
11 is a little port, like, where they hand in the food
12 trays?

13 A. Do you want me to explain it? I'll
14 explain it.

15 Q. Well, just work with me here. And you
16 have to back up to that port and hold your wrists
17 out the port so you can get handcuffed.

18 A. Yes.

19 Q. And then once you're handcuffed, you pull
20 your hands back in that port, and then they open the
21 door to your cell?

22 A. No, they hold onto a restraint rope and
23 keep your hands towards the food port.

24 Q. Okay.

25 A. They keep you pretty much up against the

1 food port so you cannot pull away or nothing.

2 Q. While they open the door?

3 A. That's correct.

4 Q. And that's because they want to control
5 your physical ability?

6 A. That's correct.

7 Q. And the same thing happens when you get to
8 the shower stall; is that correct?

9 A. Yes. There's a food port in the shower
10 and they take them off and put them on in the food
11 port.

12 Q. So the whole time you're in the open area
13 of the pod, you're handcuffed behind your back?

14 A. Yes.

15 Q. And you're being escorted by a
16 correctional officer?

17 A. Yes, sir.

18 (Tape played.)

19 A. I think if you speed it up to an hour and
20 52 minutes, I think it's right there at the
21 beginning of it.

22 Q. Right.

23 A. There you go.

24 Q. This is you being escorted into the shower
25 stall; correct?

1 A. Yes, that's me.

2 Q. Can we pause that for a second?

3 And that's at time signature 8:48:45:140?

4 A. That's correct.

5 Q. And he's opening the shower and letting
6 you in?

7 A. Yes.

8 (Tape played.)

9 Q. And what we're seeing now is you're
10 holding your hands out of that port and he's
11 uncuffing you so you can take an ordinary shower?

12 A. Yes, sir.

13 Q. That's pretty austere conditions in that
14 shower stall.

15 A. "Austere" is meaning what?

16 Q. There's not much in there, just the metal
17 walls.

18 A. It's not an ordinary shower.

19 Q. Is there a shower curtain in there?

20 A. No. It's far from ordinary. It's just a
21 silver shower with a nozzle and I think a hook.

22 Q. Now, you were in there for a considerable
23 period of time, about 40, 45 minutes?

24 A. I do not recall.

25 Q. But if we look at this, this is at

1 8:49:29, and if we move this up 40 minutes...

2 (Tape played.)

3 Q. So during this period of time, you would
4 agree with me that they asked a different inmate if
5 he wanted to go to the shower and he thought, No,
6 no, somebody is in there?

7 A. At this time?

8 Q. Yes.

9 A. I don't know if it's at this time. You'll
10 see the officer come in, and he proceeds to ask him,
11 and a few inmates refused.

12 Q. Including initially Mr. Esparza?

13 A. No, he told the officers that somebody was
14 in the shower.

15 Q. Right.

16 A. And the officer looked in the shower.

17 Q. How did the officer not see you?

18 A. I pressed myself up against the shower
19 wall where the nozzle is. And he looked in and he
20 didn't see me.

21 Q. Right. So you hid from the officer?

22 A. Yes, sir.

23 Q. Because you wanted to ambush Mr. Esparza?

24 A. Yes.

25 Q. Because Mr. Esparza owed you the \$900 for

1 the drug?

2 A. I was an SNM member and I didn't want to
3 allow somebody outside the SNM to burn the SNM, make
4 me look weak.

5 Q. But when you first met with the FBI, you
6 said you were not an SNM member.

7 A. Denied it.

8 Q. Okay. Pardon me?

9 A. I denied it.

10 Q. And this is after you decided to cooperate
11 with the United States?

12 A. That's correct.

13 Q. And when you sat down with them, you told
14 them you were going to be truthful?

15 A. I did.

16 Q. And you told the prosecutors and the FBI
17 agents who were interviewing you that other people
18 took responsibility for this crime?

19 A. Yes.

20 Q. And that was Arturo Garcia and Juanito
21 Mendez?

22 A. Yes, sir.

23 Q. Now, these are the guards coming in to
24 check to see if the shower is clear, and he checks
25 on Mr. Esparza's request, and that's where you hid

1 from him?

2 A. Yes.

3 Q. And would you agree with me that the one
4 deputy exits the pod and the other deputy goes to
5 get Mr. Esparza to bring him to the shower?

6 A. Yes, I would.

7 Q. And you were lying in wait in the shower.

8 A. I was.

9 Q. And you were armed with a shank.

10 A. Armed with a shank.

11 Q. And you knew that you wanted to harm Mr.
12 Esparza?

13 A. Yes, sir.

14 Q. That was your full intention?

15 A. You don't do it otherwise.

16 Q. And that's because you didn't want to look
17 weak?

18 A. That's the mentality of the SNM.

19 Q. Well, that was your mentality.

20 A. That's the mentality that was ingrained in
21 me through the SNM.

22 Q. Well, pause that for a second. So that's
23 you stabbing Mr. Esparza repeatedly?

24 A. Correct.

25 Q. As soon as they opened the stall, you

1 jumped him.

2 A. I grabbed him in a head lock and began
3 stabbing him in the stomach area.

4 Q. And Mr. Esparza was still handcuffed
5 behind his back?

6 A. That's correct.

7 Q. So he can do very little to protect
8 himself.

9 A. That's the purpose behind it.

10 Q. And the officers who were there both ran
11 out.

12 A. Yes, they did.

13 Q. And left you free to assault Mr. Esparza?

14 A. Yes, sir.

15 Q. Which you took full advantage of?

16 A. As the video will show.

17 Q. Go ahead and play it.

18 (Tape played.)

19 Q. So this is you still stabbing him
20 repeatedly; correct?

21 A. That's correct. I think the handle broke
22 at this time. That's why I was trying to pull the
23 icepick out of the handle to begin stabbing him,
24 which is the plain icepick.

25 Q. In fairness to Mr. Esparza, he put up a

1 pretty good fight for being handcuffed behind his
2 back.

3 A. Yes, he did. He was begging me to stop at
4 the time.

5 Q. But you didn't?

6 A. That was not the purpose.

7 Q. Well, the purpose is just to assault him
8 and shank him. You got that accomplished pretty
9 quickly.

10 A. You're not understanding the mentality of
11 the SNM. I was an SNM member. You know I got
12 criticized for this?

13 Q. Let's talk about that mentality --

14 A. Right.

15 Q. -- because you had that mentality long
16 before you were ever purportedly an SNM member.

17 A. This is the first time I attacked someone
18 with the intention of killing them.

19 Q. But you had that mentality to attack
20 somebody long before you had even entered the
21 Department of Corrections.

22 A. No.

23 Q. So when you assaulted that young man in
24 the jail over a period of days --

25 A. That's my -- I thought you were intending

1 before my incarceration period. But yes.

2 Q. Okay. So you had that mentality.

3 A. Not the killer mentality, but yes.

4 Q. Okay. Now Mr. Esparza has escaped and
5 you're sort of -- pause it for a second at 1012 at
6 934311218. Mr. Esparza has escaped temporarily.

7 A. That's correct.

8 Q. And you're behind the staircase and behind
9 the column and you're essentially regrouping?

10 A. No.

11 Q. What's happening? You let him go and
12 you're scouting him out for the second wave of the
13 attack.

14 A. No. They're shooting at me and they're
15 dispersing shotgun rounds. And that's the reason
16 why I let him go. They shot me in the leg with
17 rubber bullets. I let him go because I thought it
18 was a live round. It ripped open my shorts. And
19 I'm hiding behind a pole, because they're continuing
20 to shoot at me.

21 Q. But once you saw a way to get back to Mr.
22 Esparza, you took advantage of it?

23 A. I knew I had to.

24 Q. So the bullets weren't going to stop you?

25 A. No, not at that point.

1 Q. Play it.

2 (Tape played.)

3 Q. So you're running for cover back there.

4 A. I'm just waiting to see them reload the
5 shotgun.

6 Q. That's you?

7 A. They're reloading the shotgun at the
8 moment.

9 Q. And now this white gas coming in -- that's
10 the OC pepper spray?

11 A. That's a tear gas canister, yes.

12 Q. And they're trying to tear gas you?

13 A. Yes.

14 Q. And the only thing Mr. Esparza can do to
15 defend himself is try to get the rail --

16 A. Yes.

17 Q. -- of the staircase between you and he?

18 A. And I'm paying attention to the COs
19 lowering the shotguns in the bubble.

20 Q. So you're making sure -- you're seeing how
21 much more time you have.

22 A. I'm trying to get him away as soon as --
23 get him off the rail before they begin shooting
24 again.

25 Q. Right. You're trying to get under cover.

1 A. That's correct.

2 Q. And Mr. Esparza is doing quite a good job
3 of making sure he stays out in the open where you're
4 vulnerable.

5 A. Yes, I think he was trying to go up the
6 stairs.

7 Q. To get away from you?

8 A. Yes.

9 Q. Let's play.

10 (Tape played.)

11 Q. And this is the tear gas coming into the
12 facility?

13 A. Yes, it is.

14 Q. Or into the whole pod indiscriminately; is
15 that correct?

16 A. That's the purpose of it, yes.

17 Q. At this point, the guards aren't entering
18 the pod?

19 A. No. They're at the front door and in the
20 bubble.

21 Q. And they're sort of teaming up ready to
22 enter?

23 A. No, they do not enter at situations like
24 this.

25 Q. They're not --

1 A. Not at PNM North facility.

2 Q. They're going to let it play out?

3 A. They let it play out until the inmates
4 give up.

5 Q. So they would let you kill him.

6 A. Exactly. This is one of the only
7 facilities that they will not enter like that.

8 Q. And that's just part of the prison
9 culture?

10 A. It's the prison culture. This facility is
11 the most violent of the violent individuals in the
12 state of New Mexico.

13 Q. This Level 6?

14 A. Level 6, North facility, PNM South. It's
15 the most violent individuals.

16 MR. VILLA: Objection, lack of foundation.

17 THE COURT: Well, why don't you lay a
18 little foundation as to this?

19 BY MR. LOWRY:

20 Q. Well, this is where the Department of
21 Corrections -- there are a couple of reasons people
22 end up at Level 6; correct?

23 A. That's correct.

24 Q. And one is: In the old days, when you
25 were death-eligible, they would keep people on death

1 row in Level 6.

2 A. I wouldn't know nothing about that.

3 Q. But the other reason, they would keep
4 people who were serious violent offenders in Level
5 6?

6 A. That's correct.

7 Q. And they'd also keep people in Level 6 who
8 may be at risk of being harmed by other inmates?

9 A. Level 6 is due to -- it was conformed for
10 the SNM and violent offenders.

11 MR. VILLA: Same objection to that last
12 line of testimony.

13 Q. But there are other reasons you can be at
14 Level 6.

15 A. Yes, there is.

16 Q. And you could be at Level 6 --

17 THE COURT: I'm going to allow the answer.
18 Go ahead.

19 Q. You can be at Level 6 to protect your
20 safety.

21 A. I think there's certain -- not this
22 facility right here. This facility is for SNM, LC
23 members, and violent offenders, this unit.

24 Q. Okay. Play it.

25 (Tape played.)

1 Q. But the whole room fills up with tear gas.

2 A. Yes, it does.

3 Q. So everybody in the room gets tear-gassed?

4 A. In the pod? In their cells?

5 Q. Yes.

6 A. Yes.

7 Q. Not even that, not even your consideration
8 for the other people in the cell will stop you?

9 A. Why would I have consideration for them?

10 Q. That's my point. You didn't, did you?

11 A. No one has consideration for human life in
12 this facility.

13 Q. Including you?

14 A. Including me at this time, yes.

15 (Tape played.)

16 Q. At this point, you're on the other side of
17 the staircase?

18 A. Yes, sir.

19 Q. Can we transfer over to Exhibit AK-5?

20 This is the same pod, different angle?

21 A. Yes, it is.

22 Q. Okay, I'm going to bypass. Can you pull
23 it up?

24 (Tape played.)

25 Q. This is the staircase just from a

1 different angle, and this is after the room is
2 completely filled with tear gas; right?

3 A. That's correct.

4 Q. Okay. This is you. Again, you're trying
5 to bite Mr. Esparza's ear off.

6 A. I did.

7 Q. Okay. Go forward.

8 (Tape played.)

9 Q. And now you're trying to gouge his eyes
10 out?

11 A. No, I'm trying to get him in a head lock
12 to pull him over the rail.

13 Q. You had your fingers in his face?

14 A. No, that was Alex Sosoya.

15 Q. And so this goes on until about six to
16 eight guards come in with full gas masks?

17 A. No.

18 Q. No? You just stopped?

19 A. I stopped, yes.

20 Q. On verbal commands after you finished,
21 after you tired out?

22 A. No.

23 Q. Why did you stop? He wasn't dead.

24 A. I thought he was dead.

25 Q. Did you go back to your cell?

1 A. No, I went to the front door with my hands
2 in the air. They told me to give them the weapon.
3 I threw the weapon back into the tier. And I
4 proceeded to lay on the ground while they shot me
5 with the shotgun in the back, and they opened the
6 door and held me by the ankles and restrained me.

7 Q. Now, you told the FBI you weren't an SNM
8 member at that time?

9 A. That's what I told them, yes.

10 Q. So you lied to them --

11 A. I did.

12 Q. -- is what you're saying?

13 A. They knew I was an SNM member. It was
14 like, I guess, a running joke when I was denying it.

15 Q. So that's how you treat the truth? As a
16 running joke?

17 A. They knew, I knew, we all knew. It wasn't
18 like a secret. You know what I mean?

19 Q. Mr. Esparza never -- you never were
20 charged in that assault?

21 A. I was not.

22 Q. And he never said anything about it?

23 A. To whom?

24 Q. Anybody?

25 A. Yeah, I believe he did. He went to a

1 couple of my carnals and tried to repair his
2 relationship with the SNM and asked if it was okay
3 if he was to file a lawsuit against the Department
4 of Corrections.

5 Q. But that didn't happen?

6 A. They told him no. They told him that he
7 wasn't able to file a lawsuit because he would have
8 to testify against me.

9 Q. Well, I want to move on from the assault.
10 But the assault is a fair depiction of how you
11 were -- you know, your mentality.

12 A. At that time?

13 Q. Right.

14 A. That was my proving moment for the SNM.
15 That was to let them know I was real; let them know
16 I was down to spill blood anytime, anywhere.

17 Q. Your proving moment, then, you really
18 weren't an SNM member?

19 A. No, I was an SNM member. But you're not
20 really -- the problem with the SNM is, when they
21 recruit you, you --

22 Q. But my question is: You told the FBI you
23 weren't a member.

24 A. I told them, yes.

25 Q. You said that was a proving moment?

1 A. That was the proving moment that I was
2 real, that I was going to spill blood any time.

3 Q. Nobody knew you were real before?

4 A. They doubt you a lot. They recruit people
5 behind these doors, and --

6 Q. My question -- let's just stick with my
7 questions. Okay?

8 A. What was your question?

9 Q. And it was very simple, and you answered
10 it. That was your proving moment?

11 A. Yes, that I was a real SNM member.

12 Q. You had to prove yourself?

13 A. Yes.

14 Q. Now, you met with the FBI -- you've
15 testified differently -- but at least three times,
16 four times, five times?

17 A. I've been denying it, yes.

18 Q. You've been denying how many times you met
19 with the FBI?

20 A. That I was an SNM member?

21 Q. No, I'm asking you how many times you met
22 with the FBI.

23 A. I can't recall. Total, there may be --
24 like Mr. Villa said, I recall three. He recalled
25 more.

1 Q. Do you have to rely on Mr. Villa to
2 understand how many times you met with the FBI?

3 A. You guys have the numbers more than I do.

4 Q. Well, you were there.

5 A. Yeah.

6 Q. So you're telling this jury your memory is
7 that bad?

8 A. No, my memory is excellent.

9 Q. Then how many times did you meet with the
10 FBI?

11 A. I cannot recall.

12 Q. But during those meetings, you discussed
13 my client, Mr. Baca?

14 A. Yes. On a few of those meetings, yes.

15 Q. And you understood Mr. Baca spent some
16 time out of the state of New Mexico in Nevada?

17 A. Quite a bit, yes.

18 Q. And he came back to New Mexico and was
19 housed in the Southern facility?

20 A. He was housed at PNM North facility 1-A
21 before he was at Southern.

22 Q. But ultimately he landed at Southern?

23 A. Surprisingly, yes.

24 Q. And when he got there -- I mean, I believe
25 you told the FBI that the SNM has always been very

1 political?

2 A. From me entering the SNM, it's always been
3 very political, yes.

4 Q. And when he arrived at Southern in 2008,
5 that didn't change, did it?

6 A. It did. He started --

7 Q. It was still political, is my question.

8 A. Behind him, yes, his politics at that
9 time.

10 Q. Not everybody agreed with Mr. Baca's
11 politics?

12 A. There was rumors. I couldn't say
13 firsthand. I wasn't there. But there was rumors.

14 Q. And he had a disagreement with one inmate,
15 Jeffrey Madrid?

16 A. Yes, he did.

17 Q. And he's actually -- the SNM members had
18 expected Mr. Baca to kill Mr. Madrid because Mr.
19 Madrid had disrespected him?

20 A. He requested two inmates to kill Jeffrey
21 Madrid.

22 Q. No, my question to you is: The SNM
23 members expected Mr. Baca to kill Mr. Madrid because
24 he had disrespected Mr. Baca?

25 A. I don't know if he disrespected him. I

1 just know that he called for the murder of Jeffrey
2 Madrid.

3 Q. But the SNM wanted to kill Mr. Baca.

4 A. The SNM?

5 Q. Right.

6 A. Or Pup?

7 Q. The people at Southern wanted to hurt Mr.
8 Baca.

9 A. I do not know.

10 Q. You don't?

11 A. No.

12 Q. Okay. I thought you met with the FBI and
13 you told them that two SNM members wanted to kill
14 Mr. Baca. Benjamin Clark; correct?

15 A. And who was the second one? BB.

16 Q. Correct.

17 A. Javier Rubio?

18 Q. Bear with me for a second.

19 A. Okay.

20 Q. Actually, Benjamin Clark and Roy Martinez,
21 according to your statements to the FBI.

22 A. Yes, I heard the rumor that Roy Martinez
23 wanted to, and then I think --

24 MS. ARMIJO: Your Honor, I'm going to
25 object to rumors and foundation.

1 Q. I didn't ask you for a rumor. He didn't
2 say it was a rumor. When you talked to the FBI --

3 THE COURT: Why don't you lay a
4 foundation, because at times it did look like it
5 might have been.

6 MR. LOWRY: Sure.

7 BY MR. LOWRY:

8 Q. You spoke with the FBI on this -- the
9 statement that you couldn't remember the November
10 1st --

11 A. Right.

12 Q. -- 2017 statement. And they asked you
13 about the SNM.

14 A. They did.

15 Q. And you told them at page 2 of your
16 report -- or pardon me, at page 6 of the 11 pages of
17 the report -- that you explained to the FBI, and at
18 this point this was, I believe, Special Agent Nancy
19 Stemo?

20 MS. ARMIJO: Your Honor, can we have a
21 Bates stamp?

22 MR. LOWRY: Sure. 31664.

23 MS. ARMIJO: All right.

24 BY MR. LOWRY:

25 Q. -- that Benjamin Clark and Roy Martinez

1 wanted to kill --

2 MS. ARMIJO: Objection, foundation.

3 THE COURT: Lay a foundation for this
4 information.

5 MR. LOWRY: Okay.

6 BY MR. LOWRY:

7 Q. Well, the folks at Southern anticipated
8 this disagreement between Mr. Baca and Jeffrey
9 Madrid to spill over into violence; correct?

10 A. Due to his request of --

11 Q. No, it's really simple.

12 A. It's not --

13 Q. Yes or no?

14 A. I don't think it's a simple --

15 Q. Ms. Armijo can work with this on redirect.

16 A. Okay.

17 Q. The question is that membership expected
18 that relationship to spill over into violence.

19 A. Yes.

20 Q. And it didn't?

21 A. Did not.

22 Q. Because Mr. Baca squashed it, in your
23 words?

24 A. Because he didn't want to go to Level 6,
25 he squashed it.

1 Q. So he said, "No violence"?

2 A. I guess he shook hands and hugged, and
3 whatever.

4 Q. Right.

5 A. Yeah.

6 Q. And because of that, Mr. Baca was kited
7 out to Level 6?

8 MS. ARMIJO: Objection, foundation.

9 THE COURT: Lay a foundation how he's
10 going to know that.

11 BY MR. LOWRY:

12 Q. Well, I believe you said at one point you
13 were in Level 6 with Mr. Baca?

14 A. Right.

15 Q. In 2011?

16 A. In X pod, yes.

17 Q. And so you knew how he got to Level 6 --

18 MR. LOWRY: May the record reflect that
19 he's looking at the prosecution table?

20 A. I don't know what's going on.

21 MR. LOWRY: May the record reflect he's
22 looking at the prosecution table again for an
23 answer?

24 MS. ARMIJO: I'm standing up to object,
25 Your Honor.

1 THE COURT: Hold on. The jury will make
2 its own inference. Let's not comment on it. They
3 can decide what's going on here.

4 Do you have an objection, Ms. Armijo?

5 I think you're going to have to ask if he
6 has personal knowledge of these questions before I
7 allow him to answer them.

8 BY MR. LOWRY:

9 Q. Do you have personal knowledge of how Mr.
10 Baca got to Level 6?

11 A. Yes, I do.

12 Q. And that's because, would you agree with
13 me, the people that were living in Southern didn't
14 want him there?

15 A. That's what Anthony Baca told me, yes.

16 MS. ARMIJO: Objection, Your Honor. Now
17 it's self-serving hearsay.

18 MR. LOWRY: I didn't elicit hearsay. He
19 said he had personal knowledge.

20 THE COURT: Well, if it came from
21 Mr. Baca, then I strike it from the record. The
22 jury will ignore that answer.

23 BY MR. LOWRY:

24 Q. My question is: Do you have personal
25 knowledge about why he was sent to Level 6?

1 A. I guess not, no.

2 Q. But you knew he was at Level 6?

3 A. Yes. I lived with him.

4 Q. Because he was no longer at Southern?

5 A. I lived with him at Level 6; correct.

6 Q. Now, there was always dissension within
7 the SNM on the politic side of things?

8 A. Is that a question?

9 Q. It is. You would agree with me that there
10 was always political dissension?

11 A. Yeah, there's politics.

12 Q. And you even told the FBI the second time
13 you met them, on November 1st, you told Agent Stemo
14 that for as long as you've known the SNM, things
15 have been very political and there's a lot
16 infighting?

17 A. There is.

18 Q. So not everybody gets along?

19 A. As in life, no.

20 Q. Okay. I want to move on and talk to you
21 about the Molina allegations.

22 A. Okay.

23 Q. You told the FBI when you met with them
24 that Mr. Baca and Javier Molina were friends?

25 A. I don't recall that, but --

1 Q. You don't recall that?

2 A. No.

3 Q. You said Mr. Baca liked Mr. Molina?

4 A. I never got his personal, I guess,
5 relationship to him, but I guess I would assume so.
6 They lived together.

7 Q. And you told the FBI that Mr. Molina
8 agreed with Mr. Baca's politics?

9 A. Do you have that?

10 Q. I do.

11 MR. LOWRY: May I approach, Your Honor?

12 THE COURT: You may.

13 BY MR. LOWRY:

14 Q. I'm looking at page -- right here you
15 said, "Mr. Baca liked Molina"?

16 A. Because -- can you continue?

17 Q. "Because Molina bought into the proposed
18 changes." Baca liked Molina?

19 A. Can you read the whole paragraph to me?

20 Q. Sure.

21 A. That started from the other page.

22 THE COURT: I tell you what, Mr. Lowry.
23 Can we do this after the break? We've been going
24 for a while.

25 MR. LOWRY: Certainly.

1 THE COURT: Let's be in recess for about
2 15 minutes. All rise.

3 (The jury left the courtroom.)

4 THE COURT: All right. We'll be in recess
5 for about 15 minutes.

6 MR. VILLA: Your Honor, you want do this
7 after -- Mr. Candelaria, from the federal public
8 defenders, has been coming in and out. I believe he
9 represents Mario Montoya. So we would ask he be
10 excluded under the rule, as well. I think he might
11 be in the hallway at this point.

12 THE COURT: All right. Tell him to step
13 in here when he's not here. Probably with
14 Mr. Candelaria, I'll just give him -- get a
15 representation that he's not going to be a conduit
16 and talk to his client about what's being done here
17 in the courtroom.

18 MR. VILLA: Yes, Your Honor.

19 THE COURT: All right. We'll see y'all in
20 about 15 minutes.

21 (The Court stood in recess.)

22 THE COURT: All right. Let's go on the
23 record. Is Mr. Candelaria there? Why don't you see
24 if he's out there.

25 Refresh my memory who Mr. Candelaria

1 represents?

2 MS. DUNCAN: Mario Montoya, Your Honor.

3 THE COURT: While we're waiting, anything
4 we need to discuss before we bring the jury in?

5 MS. DUNCAN: Your Honor, I can raise
6 something quickly. This issue of cooperators'
7 lawyers going in and out of the courtroom quite a
8 bit. I saw Marcia Milner yesterday, but I didn't
9 want to interrupt the proceedings to draw it to the
10 Court's attention. I'm not sure how we should
11 proceed. She represents Roy Martinez.

12 THE COURT: If y'all have any law on this
13 to exclude attorneys, I've not had that experience
14 or problem. I think with people like from the
15 public defender's office, if they make a
16 representation they're not going to be a conduit, I
17 think I can rely on that. But if y'all have got
18 some law that I ought to be excluding attorneys, I'd
19 be glad to take a look at it. I just haven't done
20 that in the past. With our bar, I usually know the
21 lawyers and can take their word for it.

22 MS. DUNCAN: We have a specific reason to
23 deviate from that, but even for Ms. Milner, I would
24 want you to caution her.

25 THE COURT: I'd be glad to do it. Anybody

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1 you want me to. I excluded one attorney. But I
2 couldn't figure out what she was doing here after
3 her client testified. So there was no specific
4 reason there.

5 MS. ARMIJO: I think there is reason after
6 their clients testify, because for sentencing
7 purposes, they want to know what the Court has seen
8 about their client. Mr. Urquizo's name is going to
9 come up over and over again.

10 THE COURT: But Urquizo had already
11 testified.

12 MS. ARMIJO: Correct. But I think his
13 name and testimony about him will still continue.

14 THE COURT: Well, I'm not going to
15 probably pay for all the attorneys to sit in the
16 back of the courtroom here. So I'm going to monitor
17 that.

18 MS. ARMIJO: Oh, and that's a different
19 issue.

20 THE COURT: So I'm going to -- I'll be a
21 little bit lenient, but I'm not going to have
22 everyone in this case sitting in the back of the
23 courtroom and billing for it.

24 Is he out there?

25 MR. MICKENDROW: We're checking to see if

1 he's in the courtroom next door, Your Honor. But he
2 was not in the hallway.

3 THE COURT: All right. Anything else?
4 All rise.

5 (The jury entered the courtroom.)

6 THE COURT: All right. Everyone be
7 seated.

8 All right, Mr. Rodriguez, I'll remind you
9 that you're still under oath.

10 THE WITNESS: Yes, sir.

11 THE COURT: Mr. Lowry, if you wish to
12 continue your cross-examination of Mr. Rodriguez,
13 you may do so at this time.

14 MR. LOWRY: I do, Your Honor.

15 THE COURT: Mr. Lowry.

16 BY MR. LOWRY:

17 Q. Mr. Rodriguez, I want to step back for a
18 second and just revisit the Esparza video that we
19 just saw.

20 A. Okay.

21 Q. So you never were charged criminally with
22 that?

23 A. No, I was not.

24 Q. And the folks over here at the United
25 States table -- they didn't charge you?

1 A. No, they did not.

2 Q. And they could have?

3 MS. ARMIJO: Objection, foundation.

4 THE COURT: Why don't you ask if he knows
5 the charges?

6 BY MR. LOWRY:

7 Q. Do you know whether they could have?

8 A. I do not know.

9 Q. Do you know that it's a crime to lie to
10 the FBI?

11 A. I'm sure it is, yes.

12 Q. Did you get charged with lying to the FBI?

13 A. No, I have not.

14 Q. Now, you had mentioned that you had lived
15 at Level 6 and had met Mr. Baca there in 2011?

16 A. That's correct.

17 MR. LOWRY: And Your Honor, I believe that
18 the United States agrees that we can admit Exhibit
19 V-25?

20 THE COURT: Any objection, Ms. Armijo?

21 MS. ARMIJO: Oh, yes. No objection.

22 THE COURT: Any objection from any
23 defendant?

24 MR. VILLA: No, Your Honor.

25 THE COURT: All right. Not hearing any

1 objection, Defendants' Exhibit V-25 will be admitted
2 into evidence.

3 (Defendants' Exhibit V-25 admitted.)

4 MR. LOWRY: Okay. May I approach, Your
5 Honor?

6 THE COURT: You may.

7 BY MR. LOWRY:

8 Q. Mr. Rodriguez, I'm just going to ask you
9 to read this to yourself.

10 A. Okay. I want to start it at page 4,
11 because it's not a full paragraph.

12 Q. Let's just read it silently to yourself.
13 It's right there, three lines.

14 MS. ARMIJO: May I have a reference?

15 Q. Mr. Rodriguez, I'm going to ask you a very
16 simple yes-or-no question. You told the FBI that
17 Baca liked Molina.

18 A. I don't think I could answer that question
19 without the whole paragraph being read.

20 Q. But you did say Baca liked Molina?

21 A. For certain reasons, yes.

22 Q. And you also told the FBI that if Baca had
23 been living in Southern, that he could have stopped
24 or would have stopped the Molina murder?

25 A. I think --

1 MS. ARMIJO: Objection, foundation.

2 Q. You spoke with the FBI on November -- on
3 October 24, 2007; correct?

4 A. 2007?

5 Q. 2017, pardon me.

6 A. Come on, man.

7 Q. Come on.

8 THE COURT: I'll let him answer the
9 question yes as to whether he told the FBI. But if
10 he's going to testify about that --

11 MR. LOWRY: That's all I'm asking, is a
12 yes-or-no question. I'm not trying to get the
13 editorialization that the witness loves to add.

14 BY MR. LOWRY:

15 Q. These are simple questions, yes or no,
16 Mr. Rodriguez.

17 A. You have to read the whole paragraph.

18 Q. I don't have to read the paragraph.

19 A. I can't answer the question.

20 Q. So you don't remember?

21 A. Read it.

22 Q. Do you remember talking to the FBI on
23 October 24, 2017?

24 A. Yes.

25 Q. Do you remember talking to them about how

1 Mr. Molina died?

2 A. How he was killed?

3 Q. Yes.

4 A. Yes.

5 Q. Do you remember telling them that Baca
6 would have stopped the hit if he'd have been at
7 Southern New Mexico Correctional Facility?

8 A. Can you read the whole paragraph?

9 Q. It's a yes-or-no question, Mr. Rodriguez.

10 A. That's part of the paragraph -- the
11 statement that I made, yes.

12 Q. Did you make that statement?

13 A. I did.

14 Q. Okay. Let's talk about the Julian Romero
15 allegations. You had mentioned Gerald Archuleta in
16 your testimony with Mr. Villa?

17 A. That's correct.

18 Q. And you knew Mr. Archuleta.

19 A. Yes, I did.

20 Q. And you've written to Mr. Archuleta.

21 A. I've written to him before, yes.

22 Q. And you knew that Julian Romero had stole
23 Gerald Archuleta's wife, for lack of a better way to
24 say it?

25 A. I don't know all the details, but yes, I

1 know -- I'm aware of the situation.

2 Q. And you knew that Mr. Archuleta wanted Mr.
3 Romero killed?

4 A. I don't know firsthand, but that's -- I
5 can't say I was given that firsthand. But through
6 SNM bylaws, yes, that Styx would want him killed,
7 yes.

8 Q. Well, that's just not SNM bylaws; it's a
9 bit of human nature that's -- from time immemorial,
10 people don't like it when somebody steals their
11 wife, do they?

12 A. But you don't go and kill them.

13 Q. Well --

14 A. That's SNM bylaws. You're not supposed to
15 mess with other people's women.

16 Q. Well, let's talk about the SNM bylaws for
17 a second. The SNM bylaws were that you owed
18 everybody a duty of loyalty; correct?

19 A. Correct.

20 Q. And you told the FBI you knew that
21 Benjamin Clark wanted to kill Mr. Baca?

22 MS. ARMIJO: Objection, calls for hearsay.

23 MR. LOWRY: This doesn't call for hearsay.
24 That's what he testified to.

25 THE COURT: This is not being admitted for

1 the purposes of hearsay. It's just to find out
2 whether he told that to the FBI. So --

3 A. I believe I told --

4 THE COURT: Hold on --

5 THE WITNESS: I'm sorry.

6 THE COURT: The jury cannot consider this
7 statement for the truth of the matter. All right.

8 Mr. Lowry?

9 BY MR. LOWRY:

10 Q. And that would violate SNM bylaws.

11 A. Can you ask me the question again? What
12 would violate the SNM bylaws?

13 Q. Disloyalty.

14 A. Yes.

15 Q. But nobody did anything to Benjamin Clark.

16 A. Those are SNM politics.

17 Q. Those are --

18 A. If the right person would have got ahold
19 of that information --

20 Q. I'm just asking you a simple question.

21 A. The simple questions don't have simple
22 answers.

23 Q. Well, you can explain it later with Ms.
24 Armijo.

25 A. Okay.

1 Q. But my question was simple. You knew that
2 Mr. Archuleta, Gerald Archuleta, wanted Mr. Romero
3 killed.

4 A. Yes. The SNM wanted Julian Romero killed.
5 Yes.

6 Q. My question is very simple. Please don't
7 complicate it. You knew that Mr. Archuleta wanted
8 Mr. Romero killed.

9 A. That's correct.

10 Q. And you thought that the beating he got
11 was too light?

12 A. That's correct.

13 Q. You thought he should be sliced or cut
14 with a razor?

15 A. Razor blade, yes, at the least.

16 Q. So you thought Mr. Romero got off easy?

17 A. According to the SNM rules, yes, he got
18 off easy.

19 Q. According to you.

20 A. I'm an SNM member, yes.

21 Q. According to Mario Rodriguez?

22 A. Amongst other SNM members, yes, that's
23 correct.

24 Q. Do you stand ever by yourself?

25 A. I have not. I've been an SNM member and a

1 gang member all my life.

2 Q. So you have no independence?

3 A. This is the first time in my life I'm
4 taking on that opportunity.

5 Q. Truth be told, you weren't an SNM member
6 your whole life, were you?

7 A. No, but I was a gang member all my life,
8 which I just told you.

9 Q. And you started off your testimony with
10 something that was pretty curious to me. You said
11 you are an SNM member.

12 A. I am.

13 Q. But you can't be.

14 A. Well, I'm no longer an SNM. I guess I'm a
15 SNM fucking drop-out, I guess.

16 Q. So that's my point.

17 A. Yeah.

18 Q. It's pretty binary. This is my point I've
19 been driving at. It is binary. It's yes or no.

20 A. What is yes or no?

21 Q. You're not an SNM member.

22 A. No, I'm no longer an SNM member.

23 Q. So when you got on the stand and you said,
24 "I am an SNM member," that wasn't entirely correct,
25 was it?

1 A. Well, I still look at myself as SNM, you
2 know. Everyone looks at me as SNM, still. Even the
3 Department of Corrections still looks at me as SNM.

4 Q. Well, you are a former --

5 A. A former member.

6 Q. You believe you're a former; you're not
7 SNM.

8 A. Maybe it's just habit that when I'm
9 telling you that I'm an SNM member, that that's what
10 I was, and this is all new to me. I barely decided
11 to cooperate October 24. So sorry if I still think
12 I'm an SNM member.

13 Q. Now, we talked about this briefly, but you
14 debriefed with the FBI, the prosecution, a number of
15 times. So you can't remember how many, if I
16 understood your testimony correctly.

17 A. I can give you a rough number, around
18 maybe three to five, maybe, if you guys want a
19 number. I couldn't give you have the dates. And
20 even when you mentioned October 24 and November 1st,
21 I get them confused.

22 Q. Okay. But you know from your study of the
23 tablet everything about this case; correct?

24 A. About what case?

25 Q. This case, all the discovery.

1 A. Which one are we talking about?

2 Q. Well --

3 A. Because there's a lot of cases involving.

4 Q. Let's talk about the allegations against
5 Mr. Baca for the Gregg Marcantel.

6 A. Yes, I was present during those times,
7 yes.

8 Q. But my point is: You studied the tablets;
9 correct?

10 A. I went through them. I reviewed them.

11 Q. And you listened to all the audio
12 recordings on the tablets?

13 A. Skipped through them.

14 Q. You skipped through them?

15 A. Yeah. I didn't listen to full ones
16 completely. I was looking for if members were
17 talking about other members.

18 Q. But when you met with the FBI on October
19 24, you didn't tell them anything about the
20 allegations that are on the table about Mr.
21 Marcantel?

22 A. No, I didn't. I don't think we got around
23 to it, which I told them I knew specific things, but
24 I thought they were going to ask me about it, and I
25 never got into it. There was so much to talk about

1 with the Molina.

2 Q. And even the second time you sat down with
3 them in January to report, you said you might have
4 heard about it, but you had no details?

5 A. No, I heard about it. I didn't have
6 intimate details, but I stayed away from that case.

7 Q. Right. Because you thought it was stupid?

8 A. I thought it was pretty stupid, yes.

9 Q. Now, my point is: In the final debrief
10 you had with the FBI you said, "Hey, I can tell you
11 about that."

12 You talked about specific conversations
13 you had with Mr. Baca.

14 A. That's correct.

15 Q. But you told the FBI that all of those
16 conversations happened out in the recreation yard?

17 A. In the first two handball cages, I think
18 it was one conversation, yes.

19 Q. By the time of that third debrief, you
20 understood from your review of the tablet for two
21 years that that was the only place where Mr. Baca
22 wasn't being recorded?

23 A. No, I did not know he was recorded. Oh,
24 are you talking about after I read the tablet?

25 Q. Correct.

1 A. Well, yeah. I think there was no other
2 places we could speak when we weren't being
3 recorded.

4 Q. You're aware that there are recordings of
5 you talking to Mr. Baca.

6 A. There is, yes.

7 Q. On your direct testimony, it seemed like
8 you implied that there was no way out of SNM until
9 the FBI asked you to cooperate.

10 A. I never seen a real opportunity to get
11 out.

12 Q. But you could have gone into the RPP
13 Program?

14 A. I could have, yeah.

15 Q. And you could have just knocked on the
16 door and said, "Hey, I want to PC"?

17 A. At the time that the RPP Program was going
18 on, I was being charged at the state level on the
19 Molina case, you know. And you've got to remember
20 the way you guys painted have me is the way the
21 Department of Corrections used me, as well.

22 Q. I'm not painting you. I just asked a
23 simple question.

24 A. I would have stayed in solitary
25 confinement for the rest of my sentence, because

1 they wouldn't have let me out.

2 Q. But there were ways out, is my point.

3 A. They're not as easy as you make them seem
4 to be.

5 Q. Well, and there's also another way out
6 that you told the FBI about, is there was a
7 religious exception for folks that were members that
8 would say, "Due to my religious beliefs, I'm
9 dropping out"?

10 A. Those guys, that's not -- I don't know. I
11 don't -- there's a way you can go religion, yeah.
12 You can. You still live around the SNM, though.

13 Q. Well, you didn't have to. You could have
14 gone into the RPP Program or you could have gone
15 into PC. There are ways out. You just didn't like
16 exercising them. Isn't that true?

17 A. This is the only opportunity I have to get
18 completely out and can never go back.

19 Q. So this is the only opportunity you have
20 to avoid being charged with crimes like the Esparza
21 crime.

22 A. I think the timelines for the Esparza
23 crimes are up, unless I was charged with RICO
24 overlaps.

25 Q. And you could be.

1 A. I still could be. I think that's what the
2 5K protects me from, though.

3 Q. And that's a benefit you get with your
4 cooperation.

5 A. Exactly.

6 Q. And that's something you want. You want
7 those benefits, don't you?

8 A. At the time, I have never really cared
9 about --

10 Q. You want the benefits today?

11 A. Today?

12 Q. Today.

13 A. Since Mr. Villa made it out in the open
14 that I may get two years, yeah, I would enjoy that.

15 Q. Now, one other question I had about your
16 comments about the SNM. You said that the SNM had
17 never been able to tax other inmates for drug
18 distribution.

19 A. Is that a question?

20 Q. Yeah. You told the FBI that the SNM
21 didn't tax anybody for bringing drugs inside a
22 facility.

23 A. Again, is that a question? It sounds like
24 a statement.

25 Q. It is. Did you tell the FBI that the SNM

1 was never able to tax other inmates involved in drug
2 sales?

3 A. They didn't necessarily tax, that it was
4 never a really coming to you and telling you, "Hey,
5 you're going to live here and you're going to pay
6 taxes."

7 Q. Do you remember the FBI asking you this
8 simple question? Has the SNM ever been able to tax
9 other inmates involved in drug sales?

10 A. I think I remember that, yes.

11 Q. And you answered no?

12 A. No. Yes.

13 Q. They were never able to.

14 A. They were able to, but not in the form of
15 taxes like you're alleging.

16 Q. I didn't allege it. It's the FBI's
17 question.

18 A. Yeah.

19 Q. So Mr. Rodriguez, you didn't opt to leave
20 the SNM until -- you could have opted for the PC,
21 protective custody; correct?

22 A. No.

23 Q. You could have opted for protective
24 custody.

25 A. According to who?

1 Q. According to knocking on the door and say,
2 "I need to get out of here."

3 A. It wasn't in my interests.

4 Q. That's my point. It wasn't in your
5 interests until you could reduce your prison
6 exposure to get out.

7 A. Until I seen that the discovery made a lot
8 of these individuals living the life that they
9 portrayed when they weren't living it to the fullest
10 extent that I was. That's why I left.

11 Q. You could have gotten out with a religious
12 exemption?

13 A. You got to remember, I was in the SNM 100
14 percent.

15 Q. You could have gotten out with the RPP
16 Program?

17 A. That's not my mentality.

18 Q. Your mentality is to get the benefits?

19 A. My mentality is: I'm in 100 percent or
20 I'm not in at all. If I'm going to read the Bible,
21 I'm going to be a chaplain and be 100 percent.
22 Anything I do, there is no half-stepping with me. I
23 made the decision to be completely loyal to the SNM,
24 and I did the best I could be. And changing my life
25 now, I have no opportunity but to go forward and

1 commit myself 100 percent to my cooperation and
2 changing my life. That's my mentality. So going to
3 RPP around and --

4 Q. Mr. Rodriguez, let me just ask you a
5 simple question. You said you're in 100 percent or
6 you're in zero?

7 A. Exactly.

8 Q. Okay. On October 24, you made a decision
9 to talk with the FBI.

10 A. I did.

11 Q. You lied to them, didn't you?

12 A. According to you, yes.

13 Q. According to you?

14 A. Yes, I did. I lied to them.

15 MR. LOWRY: No further questions, Your
16 Honor.

17 THE COURT: Thank you, Mr. Lowry.

18 Ms. Jacks, do you have cross-examination
19 of Mr. Rodriguez?

20 MS. JACKS: I do.

21 THE COURT: Thank you, Ms. Jacks.

22 CROSS-EXAMINATION

23 BY MS. JACKS:

24 Q. Mr. Rodriguez, I'm going to pick up where
25 Mr. Lowry left off, because I'm just a little bit

1 confused.

2 A. Okay.

3 Q. Yesterday you told us on direct
4 examination that you were SNM?

5 A. Yes, ma'am.

6 Q. Right. I'm not misunderstanding that
7 testimony, am I?

8 A. I believe I told the FBI on Saturday I
9 was, as well.

10 Q. Okay. But that's not what you told the
11 FBI back on October 24 of 2017, when you're saying
12 you first made the decision to become a Government
13 witness.

14 A. That's correct.

15 Q. Back on October 24 you told the FBI --
16 sorry. I've just got to get kind of organized here.
17 You told the FBI that back in 2005 the SNM attempted
18 to recruit you?

19 A. Yes.

20 Q. Right. And that was -- you had done
21 something; right? Do you remember what you'd done?

22 A. In 2005?

23 Q. Yeah.

24 A. What did I do?

25 Q. You'd assaulted a correctional officer.

1 A. Oh, yes.

2 Q. And after that assault -- you told the FBI
3 that after that assault, the FBI -- excuse me, the
4 SNM had tried to recruit you.

5 A. Right. That was --

6 Q. And you never really heard what happened,
7 but you'd heard a rumor that you'd been shot down
8 for some reason.

9 A. That's correct.

10 Q. And I'm assuming the rumor that you'd been
11 shot down was based on the fact that there was some
12 question about the charges that you were imprisoned
13 on.

14 A. I can assume that.

15 Q. Okay. Well, they were charges of criminal
16 sexual penetration; right?

17 A. Two counts.

18 Q. Rape on another inmate at a county jail?

19 A. That's correct.

20 Q. And so it was your thought back in 2005
21 that they shot you down because people that commit
22 rapes aren't supposed to be admitted into prison
23 gangs?

24 A. Yes. They didn't know the full extent of
25 the charge at that time.

1 Q. And then what you told the FBI back in
2 October of 2017 was that at some point after that,
3 you got moved to another pod where there were Los
4 Carnales prison gang members?

5 A. There was three Los Carnales prison gang
6 members and two SNM members.

7 Q. And that the Los Carnales members tried to
8 recruit you to join their prison gang?

9 A. No.

10 Q. You didn't tell that to the FBI back in
11 October?

12 A. I told them a friend named Joseph
13 Sifuentes was pushing me to get schooling from
14 Diablo, from Los Carnales, and asking Diablo to, I
15 guess, teach me things. But no, they never came out
16 and recruited me.

17 Q. Did you tell the FBI on October 24 of 2017
18 that, "Gang members, first name unknown, last name
19 unknown, but known as Diablo" --

20 A. Right.

21 Q. "Tyson, last name unknown, and a gang
22 member named Alf" were living with you in a pod?

23 A. That's correct.

24 Q. And that they were associated with the Los
25 Carnales prison gang?

1 A. That's correct.

2 Q. And did you tell them that your friend
3 Joseph Sifuentes, also known as Snuffy, started
4 pushing you to join the Los Carnales?

5 A. That's false. That's a misinterpretation
6 of that.

7 Q. Let's just be clear. Did you tell that to
8 the FBI on October 24, 2017?

9 A. No.

10 Q. Okay. Have you reviewed -- had an
11 opportunity to review some of the reports the FBI
12 has written regarding your statements?

13 A. Which day is that? From October 24?

14 Q. October 24.

15 A. That's the one that I skimmed through.

16 Q. So you did have a chance to review it?

17 A. That's correct.

18 Q. And when you reviewed it, did you make a
19 correction? Did you see that statement, first of
20 all, the statement that Joseph Sifuentes, also known
21 as Snuffy, started pushing you to join the Los
22 Carnales?

23 A. It's Snorty.

24 Q. Not Snuffy?

25 A. As you can see, you know what I mean,

1 there are mistakes in there.

2 Q. Did you review that report?

3 A. How long is that report? I think 11
4 pages? I think it has a number on the top corner,
5 doesn't it?

6 Q. That report is nine pages.

7 A. I think I skimmed through that one.

8 Q. Did you make any corrections to that part
9 of the report?

10 A. I did not.

11 Q. But your testimony today is that the FBI
12 got it wrong?

13 A. Yes.

14 Q. That they got the name of the guy wrong?
15 It was not Snuffy, it was --

16 A. Snorty.

17 Q. -- Snorty. And they got it wrong that he
18 pushed you to join the Los Carnales?

19 A. He was pushing me to speak to Diablo and
20 Alf and Tyson in order to get schooling from him,
21 because he was close to Diablo.

22 Q. The report actually attributes two things
23 to the person that you're saying is known as Snorty,
24 that he started pushing you to join the Los
25 Carnales.

1 A. Not join.

2 Q. That's wrong?

3 A. Yes.

4 Q. But the part where he said he wanted you
5 to talk to Diablo about how to make shanks -- that's
6 right?

7 A. Not how to make shanks at that time, no.
8 Diablo taught me to make shanks later.

9 Q. Was Snorty asking you to talk to Diablo?

10 A. Pushing me in that direction.

11 Q. To get that schooling?

12 A. Eventually, yes, I believe so.

13 Q. So part of that statement is wrong,
14 according to you, and part of it is right?

15 A. Yes.

16 Q. Did you tell the FBI back on October 24
17 that you were never voted into the SNM?

18 A. I believe -- October 24?

19 Q. Yes.

20 A. Yes, I was denying I was an SNM member.

21 Q. Did you tell them you never actually
22 earned your bones?

23 A. That's what I told them, yes.

24 Q. Did you also tell them that what happened
25 was that some people that you were housed with,

1 specifically Robert Martinez, Lupe Urquizo, and
2 David Calbert, started just calling you carnal?

3 A. I told them that -- I think in that one --
4 read the first part you told me before.

5 Q. Did you tell them that Robert Martinez,
6 Lupe Urquizo, and David Calbert just started calling
7 you carnal?

8 A. No. I said David Calbert in the yard one
9 day was calling me carnal out of nowhere, and I
10 didn't shut him down because I don't want to be
11 disrespectful. Because the minute you shut down,
12 and you say, "Hey, I'm not your carnal," it comes
13 off as you're being hateful to the SNM. So I just
14 let it go.

15 Q. So what you told him back on October 24
16 was that you started being called a name or called a
17 term that would be used to refer to other SNM
18 members?

19 A. I think that interview is before I
20 debriefed; right?

21 Q. Well, that's October 24 --

22 A. Right. Is that after I signed the
23 Kastigar?

24 Q. I think that's the day you did.

25 A. Yeah, I think prior to that, I was denying

1 that. That's why that may be in there.

2 Q. Let's just answer the question. And the
3 question is: Did you tell them that David Calbert
4 just started calling you "carnal," and that you
5 never corrected him?

6 A. That's correct.

7 Q. Okay. Now is that the truth or a lie?

8 A. That was the truth. He did start calling
9 me carnal out of nowhere.

10 Q. And were you truthful to the FBI on
11 October 24, 2017, when you told them that you were
12 never voted in, or earned your bones, or were
13 officially in the SNM?

14 A. That was a lie.

15 Q. So you lied to the FBI on October 24?

16 A. Yes, ma'am, I did.

17 Q. Now, you're aware, as I think it was
18 brought out in the last line of questioning, that
19 that's actually a crime: Lying to the FBI?

20 A. I guess I'll be getting an indictment,
21 huh?

22 Q. People have gone to jail. Martha Stewart
23 went to jail for that.

24 A. Looks like I'm already there, ma'am.

25 Q. So I want to talk to you a little bit

1 about Javier Molina, okay? Because shortly -- you
2 moved to Southern New Mexico Correctional Facility
3 sometime in December of 2013?

4 A. I believe so.

5 Q. Do I have that right?

6 A. That sounds about correct.

7 Q. And shortly after you moved there, you
8 wanted Mr. Molina killed, didn't you?

9 A. I wanted Efrain Martinez and Timothy
10 Martinez to assault him, yes.

11 Q. You actually wanted him killed, didn't
12 you?

13 A. I told them to go beat him up.

14 Q. Did you tell the FBI on October 24, 2017,
15 that after you were moved to the Southern New Mexico
16 Correctional Facility, you were high on meth and
17 tried to get Molina hit?

18 A. That's correct.

19 Q. At that point, what was your issue with
20 Molina?

21 A. I had known that the paperwork was on its
22 way, and I would -- I got high on meth, and me and
23 him got into an argument.

24 Q. Over what?

25 A. I think it was over -- I was up for four

1 days, and I thought people were talking shit about
2 me.

3 Q. So you knew, based on your conversations
4 with other people -- it was in your mind that you
5 thought he was a rat?

6 A. I knew he was a rat.

7 Q. And then you were using drugs and getting
8 paranoid. Meth makes you paranoid; right?

9 A. Exactly.

10 Q. You were up for four or five days, I think
11 you said?

12 A. I was up for a total of five days.

13 Q. And you thought he had done something
14 to -- flesh it out for me. So what did he do?

15 A. Well, you start hallucinating. And I was
16 up for five days. And I was at my door watching him
17 and watching another individual named Dale Chavez.
18 And I was just thinking that they were saying,
19 "We're going to get him later. We're going to get
20 him."

21 I told them, "Come to my fucking door.
22 Come get me." Opened my door. He comes. "What are
23 you tripping on?"

24 I told him, "I'm tripping on you."

25 And I had a weapon in my hand. And I told

1 him, "Open my door."

2 He told me, "God bless you," and he walked
3 away.

4 Then I started hollering at the other
5 carnals, "That's not a real SNM member, that fucker
6 is a sissy. I'm a real SNM member."

7 And he locked down in his room. That was
8 it. And then I started tripping on Jerry Montoya
9 while he was in his room.

10 Q. Let me stop you there, because I think you
11 answered the question. I can't let you go on.

12 A. Okay.

13 Q. The point is that after that situation
14 happened, you tried to get Efrain Martinez and
15 Timothy Martinez to kill or hit Molina for you;
16 right?

17 A. Assault him, yes.

18 Q. And that was based on your perception that
19 somehow he had it out for you, at least in part.

20 A. I was -- yeah, I was hallucinating.

21 Q. And also in part on your perception that
22 he was -- or your thought that he was a rat?

23 A. I was told he was a rat, yes.

24 Q. And Efrain Martinez and Timothy Martinez
25 said, "We're not doing this unless you show us some

1 kind of paperwork."

2 A. Efrain Martinez sent me a letter, said
3 that, "I'm not going to fuck up my career, so I need
4 to see the paperwork first."

5 Q. Now, I want to talk to you a little bit
6 about Daniel Sanchez.

7 A. Okay.

8 Q. I think you said, based on your testimony
9 yesterday, you actually knew him before you got
10 transferred to Southern in December of 2013?

11 A. Very well.

12 Q. And when you got down there to Housing
13 Unit 1-AB pod, he was there?

14 A. Yes.

15 Q. When you got down there, you heard --
16 you'd heard from other inmates that he'd had some
17 sort of conflict with Javier Molina and Timothy
18 Martinez?

19 A. Yes.

20 Q. Like over a handball game or something?

21 A. Do you want me to elaborate?

22 Q. Did you hear that he had a conflict with
23 him about something that happened in the rec yard?

24 A. I did hear that.

25 Q. And that instead of physically acting out

1 on that conflict, that Mr. Sanchez had talked it
2 out, talked the issue out with him, and had resolved
3 it through talking?

4 A. No.

5 Q. Did you believe that the way that you were
6 told Mr. Sanchez handled that conflict made him look
7 weak?

8 A. The way --

9 MS. ARMIJO: Objection. Calls for hearsay
10 and foundation.

11 THE COURT: Well, I think this is more his
12 thoughts, so his state of mind. So I'll allow it.
13 Overruled.

14 BY MS. JACKS:

15 Q. Do you understand the question?

16 A. Go ahead and do it again.

17 Q. Yeah. You heard some stuff about Mr.
18 Sanchez and this conflict with Molina and Timothy
19 Martinez?

20 A. Yes, I had.

21 Q. And when you heard about it, and you heard
22 about how Mr. Sanchez handled it, did you think that
23 that made Mr. Sanchez look weak?

24 A. I didn't necessarily believe it at first.
25 You got to remember, Dan Dan was someone I looked up

1 to.

2 Q. Okay. But my question is: Did you think,
3 in your mind, that if that's what he did, he looks
4 weak?

5 A. I didn't even believe it at the time. I
6 just let it go as politics, and I didn't even go ask
7 Timothy Martinez about it when I was told about it
8 at that time.

9 Q. Let me just see if I can find -- was there
10 a situation that developed at Southern after you got
11 there where another -- the same inmate that you had
12 tried to get to help you kill Molina, Efrain
13 Martinez, pointed out an individual that he thought
14 was a drop-out, a PC, at a Level 4 prison?

15 A. That's correct. Hold on. Will you
16 rephrase that? Say it again?

17 Q. I'm sorry?

18 A. Ask me that question again.

19 Q. I said: After you got to Southern, did a
20 situation develop where another inmate, this guy,
21 Efrain Martinez --

22 A. Right.

23 Q. -- pointed out to you an individual who he
24 said had been a drop-out at a -- or PC inmate at
25 another prison?

1 A. No.

2 Q. Was there somebody that Efrain pointed out
3 as an individual who had gone into PC at a Level 4
4 prison?

5 A. Daniel Sanchez pointed him out.

6 Q. Did you tell the FBI on October 24, 2017,
7 that Efrain Martinez pointed him out?

8 A. That's incorrect. That's a mistake in
9 there.

10 Q. So that's another mistake in that report
11 that you reviewed but didn't correct?

12 A. Yes, ma'am.

13 Q. Did you tell the FBI back on October 24,
14 2017, that Efrain Martinez wanted that inmate
15 stabbed?

16 A. No. Myself and Efrain wanted him stabbed.

17 Q. So you admit that you wanted the guy
18 stabbed and Efrain Martinez wanted him stabbed?

19 A. Exactly.

20 Q. And that was because he had gone into
21 protective custody at another prison?

22 A. That's because Daniel Sanchez told us he
23 did.

24 Q. Let me go back for a second. Daniel
25 Sanchez actually told you, "Don't stab him," didn't

1 he?

2 A. No, he did not.

3 Q. Did you tell the FBI on October 24, 2017,
4 that Daniel Sanchez told you, told everyone, not to
5 do anything to the guy?

6 A. We didn't have our weapons that day.

7 Q. That's not --

8 MS. JACKS: I move to strike the answer,
9 Your Honor.

10 THE COURT: It's nonresponsive, so I'll
11 strike the answer.

12 MS. JACKS: Will the Court instruct the
13 witness to answer the question?

14 THE COURT: Answer her questions. And the
15 Government, if it wants to bring out further
16 information, can do that.

17 THE WITNESS: Okay. I keep forgetting
18 that the Government is going to talk to me after
19 you.

20 Go ahead.

21 THE COURT: Ms. Jacks.

22 BY MS. JACKS:

23 Q. There is a question pending that hasn't
24 been answered.

25 A. Go ahead and ask it again.

1 Q. Do you want me to ask it again?

2 A. Yes, ma'am, please.

3 Q. Did you tell the FBI that Mr. Sanchez told
4 everyone not to do anything?

5 A. Yes.

6 Q. And when that happened, did that make
7 Sanchez look weak in your eyes?

8 A. Yes.

9 Q. And did you also believe it made him look
10 weak in the eyes of other people who were identified
11 as SNM Gang members in that pod?

12 A. Yes. They came to me after.

13 Q. They actually came to you?

14 A. They came to me, complaining about him.

15 Q. And given what I think you've told us,
16 that you're 100 percent down and dedicated or were
17 100 percent down and dedicated --

18 A. That's correct.

19 Q. -- to the SNM, that's a particular offense
20 to you?

21 A. That's why you're supposed to be the
22 carnal, and say, "Hey, let it go. Leave him alone.
23 Let it go. It's all good."

24 Q. And when Mr. Sanchez refused to do
25 something about that inmate that you and Efrain

1 Martinez wanted hit, what did you do?

2 A. We stopped in the dog run and told him he
3 had to leave, myself and Daniel Sanchez.

4 Q. Actually, you did it, didn't you?

5 A. I stopped and Daniel Sanchez stood next to
6 me, and we told him that he needs to leave.

7 Q. Did you tell the FBI on October 24, 2017,
8 that you took it upon yourself to threaten that
9 individual?

10 A. Exactly.

11 Q. And did you tell the FBI back on October
12 24, 2017, that when you took it upon yourself to
13 threaten that individual, he then asked for
14 protective custody again?

15 A. Yes, he left.

16 Q. I was trying to take notes yesterday when
17 you were testifying, and there was a lot you went
18 through in terms of the timing about what happened
19 on March 6 and 7, 2014. So what I thought we'd do
20 is go over it again. And I'm going to write it down
21 and make sure I get it right. Okay?

22 A. Okay.

23 Q. So I want to step through it piece by
24 piece. So let's just start with -- I'm going to put
25 the date March 6, 2014.

1 A. Okay.

2 Q. Okay? That's where I want to start. And
3 that's the date that Lupe Urquizo got to Southern
4 New Mexico Correctional Facility; right?

5 A. Right.

6 Q. Okay. So let's start there. And he's
7 actually walked into unit 1-A and is taken to yellow
8 pod; right?

9 A. That's correct.

10 Q. And if you -- if I recall your testimony
11 correctly, I think you said that you had some
12 communication with him right at that time as he was
13 escorted into yellow pod.

14 A. Yes. At the front door or the emergency
15 door?

16 Q. Well, let's do -- because there are two
17 times that you communicated with him; right? Or at
18 least two times that day.

19 A. We'll find out when you start asking me.

20 Q. So let's say when he arrives at unit 1-A.

21 A. Okay.

22 Q. So that would be where you saw him through
23 the pod door of blue pod; right?

24 A. The front door, yes.

25 Q. The one that has a window?

1 A. Yes, ma'am.

2 Q. So we have Lupe Urquizo arriving at unit
3 1-A?

4 A. Correct.

5 Q. And approximately what time did that occur
6 on March 6?

7 A. I couldn't give you the exact time, but
8 approximately -- I want to say it would have to be
9 after 12:00.

10 Q. So after 12:00 noon?

11 A. They were coming from Santa Fe on a
12 transport. They usually leave early. So it's
13 around three or four hours.

14 Q. So when do you have lunch?

15 A. Lunch is about 11:30.

16 Q. So it was sometime after lunch that you
17 saw him outside the pod door of blue pod?

18 A. It had to be after 12:00 because we go in
19 for 11:00 count.

20 Q. Is it okay if I put after 12:00 noon?

21 A. Yes.

22 Q. That works?

23 A. That will work.

24 Q. Okay. So then there was -- I think you
25 testified the next communication, or the next time

1 you had some sort of interaction with him, was at
2 the emergency door between blue pod and yellow pod.

3 A. That's correct.

4 Q. And if I got you right, you said that you
5 actually knew he was coming, and you had a note
6 ready and you slid it under the door.

7 A. That's correct.

8 Q. So that's the next thing I want to talk
9 about. I'm going to use "MR" for you and "LU" for
10 him, so I don't have to write it out every time.

11 A. Okay.

12 Q. So Mario Rodriguez slides the first note
13 under the door to Lupe Urquizo?

14 A. That's correct.

15 Q. Okay. About what time was that?

16 A. It was right after he came to the pod.

17 Q. So --

18 A. The front door, seconds.

19 Q. Within minutes of the first interaction?
20 So can we say somewhere between 12:00 and 12:15,
21 something like that, or 15 minutes after he comes
22 in?

23 A. No, not 15 minutes. Almost instantly
24 after.

25 Q. Two minutes?

1 A. Seconds.

2 Q. Immediately?

3 A. Seconds, because you're going to
4 orientation. They're going to lock you down.

5 Q. Let's do this. I'll label the first one
6 1. Okay?

7 A. Okay.

8 Q. And the second one 2, and we'll say number
9 2 happened seconds after one; right?

10 A. Yes.

11 Q. We're in agreement?

12 A. Yes, ma'am.

13 Q. And then I think you said that Mr. Urquizo
14 at some point later that day managed to have
15 somebody else slide a note back to you?

16 A. That's correct.

17 Q. And the person that you say slid the note
18 back was who?

19 A. I think it was Carlos Herrera.

20 Q. You think? Do you know? I mean, I don't
21 want you to guess if you don't know.

22 A. I'm pretty sure it was Carlos.

23 Q. Maybe what we should do is say that Lupe
24 slid a note back to you through some third party?

25 A. Yes.

1 Q. Because he was locked down; right? He was
2 in orientation?

3 A. Yes, ma'am.

4 Q. So number 3. So I wrote there Lupe
5 Urquizo passes a note to Mario Rodriguez by a third
6 party. I'm going to put "under the door" because
7 that's under the same door that you passed number 2;
8 right?

9 A. Where everything goes through, yes.

10 Q. When did that happen, according to you?

11 A. It had to be sometime during the same day
12 that he arrived.

13 Q. There were some other things that you
14 talked about. I think you talked about a visit to
15 the yard somewhere around -- a visit to the yard
16 that you didn't go to, but other people went to
17 sometime around 3:00 p.m.?

18 A. That was the next day.

19 Q. The visit to the yard was the next day?

20 A. Yes, ma'am.

21 Q. Okay. So I'm trying to think what -- is
22 there a count at 4:00 every day?

23 A. Every day.

24 Q. And is there dinner at some point?

25 A. Dinner is right when the count opens. I

1 think it's 4:00. So we eat in our cells.

2 Q. Is this note, this number 3, the note that
3 Lupe Urquizo passed to you -- is that before or
4 after dinner, if you know?

5 A. Number 2 or 3?

6 Q. Number 3. That's the one we still don't
7 have a time on.

8 A. Oh, the circled numbers. That would have
9 to be before dinner. Yeah, before dinner.

10 Q. And so what happens is: You get locked
11 down for count at about 4:00 in the afternoon, and
12 then you get dinner while you're locked down?

13 A. I think so.

14 Q. So before 4:00 p.m.? Are we good with
15 that?

16 A. Yeah.

17 Q. All right. So I put before 4:00 p.m.;
18 before 4:00 p.m. count. Why don't we do that?

19 A. Okay.

20 Q. All right. And then if I recall your
21 testimony correctly, I think you said in response to
22 that note you were able to pass a second note to Mr.
23 Urquizo?

24 A. I responded to his note that he sent me.

25 Q. So I'm going to say, "Under the same

1 door"?

2 A. Under the same door, yes.

3 Q. And again, Mr. Urquizo at this point, at
4 least based on your knowledge of the prison system,
5 would have been locked in his cell?

6 A. Orientation.

7 Q. So did that also go through some sort of
8 third party?

9 A. That's correct.

10 Q. And when did -- when is it that you say
11 you passed that note back to Mr. Urquizo?

12 A. Once I was done responding to his letter,
13 once I read his letter, then I wrote it out. So
14 it's before.

15 Q. So was that also before the 4:00 p.m.
16 count?

17 A. Yes, ma'am.

18 Q. All right. So all this, all of this
19 happened before the 4:00 p.m. count?

20 A. I'm pretty sure it did, yes.

21 Q. And do you have any concept, in terms of
22 what you're telling us, the time between the note in
23 number 3 and the note in number 4? Was it 10
24 minutes? Two hours? What is your --

25 A. I didn't have my stopwatch at the time.

1 But as long as it takes you to read and respond, so
2 not very long.

3 Q. I'm leaving it up to you to tell us.

4 A. Not very long. I can't give you an exact
5 number.

6 Q. Can you give us an approximate time
7 period? I mean, was it under an hour? Over an
8 hour?

9 A. I don't think it takes that long to write.
10 So maybe 15, 20 minutes.

11 Q. Okay. So I'm going to put --

12 A. Under 15 minutes.

13 Q. I'm going to add to number 4 here, "Under
14 15 minutes from number 3." "Less than 15 minutes
15 from number 3." In other words, you responded --
16 according to what you're saying, you responded to
17 him in 15 minutes or less.

18 A. Right.

19 Q. Does that make sense? Did I get that
20 right?

21 A. I don't know if it's right, but it
22 sounds --

23 Q. What I'm trying to communicate -- if you
24 want me to write something else, I will. But you're
25 saying that less than 15 minutes after number 3, you

1 passed the note that we're calling note 4?

2 A. Yes.

3 Q. All right. Now, did anything else happen
4 in terms of you, in terms of what you're saying you
5 communicated with Mr. Urquizo on March 6?

6 A. I believe I spoke to Dan a couple times,
7 and -- in between these letters?

8 Q. I mean, you did other things. You went on
9 living your life; right?

10 A. In between these letters?

11 Q. I'm just asking anything of significance
12 with respect to what you're saying about -- let me
13 go back. No paperwork was passed, according to you,
14 right, that night?

15 A. Not at this time, no.

16 Q. And you didn't have any further
17 communication with Mr. Urquizo that night.

18 A. After that one, after I responded?

19 Q. Right.

20 A. No.

21 Q. And you didn't get any more notes,
22 according to you, from him that night.

23 A. I don't recall, no.

24 Q. Well, that's two different things, isn't
25 it? Either you don't recall, or you didn't?

1 A. I would recall if I did. I didn't.

2 Q. Okay. So no further notes from him?

3 A. No.

4 Q. So can we go to March 7? I'll leave a
5 little space in case we come up with something.

6 A. All right.

7 Q. And March 7, if my notes are good, I think
8 that you testified yesterday that you went to the
9 yard.

10 A. Yes.

11 Q. And if I'm remembering correctly, while
12 you were waiting to go out to yard is when you had
13 some sort of communication through the pod door of
14 yellow pod.

15 A. That's correct.

16 Q. And approximately what time was that?

17 A. I'm trying to remember back to when we
18 used to go to the gym. It has to be sometime in the
19 morning, before lunch.

20 Q. So I noted on this exhibit you went to the
21 yard. And on the way you talked through the yellow
22 pod main door.

23 A. That's correct.

24 Q. Okay. And it was sometime before lunch.

25 A. Sometime in the morning between -- I think

1 we go out for an hour, so it would be maybe 9:00.

2 9:00. 10:00.

3 Q. What time is lunch?

4 A. 11:00, 11:30.

5 Q. All right. So I mean, I don't want to --
6 you said you know it's before lunch; right?

7 A. Right.

8 Q. And when you said 9:00 or 10:00, you're
9 kind of guessing; right?

10 A. Yeah, I'm kind of guessing. Because I
11 don't remember the routine there.

12 Q. Is it okay if we just put "sometime before
13 lunch"?

14 A. Yes, ma'am.

15 Q. And lunch is at 11:00 or 11:30 a.m. Are
16 we in agreement about that?

17 A. Yes.

18 Q. All right. Then if I recall your
19 testimony, what you're saying is that you came back
20 from yard?

21 A. Yes.

22 Q. And sometime after you came back from
23 yard, according to you there was paperwork passed
24 under that same door we've been talking about.

25 A. That's correct.

1 Q. The door that adjoins the two pods?

2 A. That's correct.

3 Q. So is that -- did that happen after you
4 came back from yard?

5 A. I think it happened after count.

6 Q. Okay. And what time -- I mean, there is
7 counts many times a day; right?

8 A. Yeah. It's after the lunch count.

9 Q. Okay. And so when is the lunch count?

10 A. So it would have to be 11:00 to 12:00.

11 Q. From 11:00 to 12:00 is the lunch count?

12 A. Yes, ma'am.

13 Q. So everybody is locked in their cells at
14 that point?

15 A. Everybody except for the individuals on
16 orientation.

17 Q. They get to come out at that time?

18 A. They get a shower, and then they lock them
19 back down.

20 Q. And you're testifying about that -- that's
21 just sort of the regular routine that you remember?

22 A. Yes, ma'am.

23 Q. So why don't -- so the next thing is this
24 paperwork. What can we call that door between the
25 two pods? Is it an emergency door?

1 A. Emergency door. Emergency conjoining
2 door.

3 Q. All right. So you -- and you're actually
4 there to receive the paperwork when it's passed,
5 according to you.

6 A. I do.

7 Q. Were you with anybody?

8 A. At that time, no.

9 Q. Were you with Timothy Martinez?

10 A. Timothy was at work. No.

11 Q. So the stuff comes sliding under the door,
12 and you're the one that gets it, and you're there by
13 yourself.

14 A. I'm there by myself at that time, yes.

15 Q. And that's after the lunch count?

16 A. That's after the lunch count.

17 Q. And what time -- can we put a time on it,
18 or do we just want to say that sometime after the
19 lunch count, which generally ends at noon?

20 A. What are we putting a number on?

21 Q. On when you actually physically supposedly
22 take this paperwork?

23 A. Yes, sometime after the lunch count.

24 Q. Which ends at noon?

25 A. Right. It had to be before the phone

1 yard, so it's probably right after the 12:00 count.

2 Q. What time is phone yard?

3 A. Phone yard, I think, is -- because we go
4 into count again at 4:00. It has to be -- phone
5 yard is, like, maybe 2:30, 3:00 to 4:00, something
6 like that. It has to be. Because we go straight
7 from phone yard -- they alternate the schedules.
8 One day we go to phone yard, the next pod goes to
9 phone yard. So it's complicated when you want the
10 routine down. So it has to be 3:00 to 4:00 that
11 day.

12 Q. Let me see if I can flesh this out a bit
13 more before we add this to the chart.

14 A. Okay.

15 Q. I think what you said yesterday -- I might
16 be wrong; correct me, if I'm wrong. I think what
17 you said yesterday is that you actually did not go
18 to phone yard that day.

19 A. I did not.

20 Q. And the reason you did not go to phone
21 yard, based on your testimony, is that that was when
22 you were making shanks.

23 A. That's correct.

24 Q. So your recollection, based at least on
25 your testimony yesterday, was phone yard.

1 A. Yes, yes.

2 Q. What I'm going to do -- I'm going to skip
3 down -- we're going to put that on there. But
4 something happened. A couple things happened,
5 according to what you're telling us, between the
6 time you got the paperwork and the time people went
7 out for phone yard; right?

8 A. That's correct, yes.

9 Q. So one of the things you said was that the
10 paperwork was passed back.

11 A. I passed it back, yes.

12 Q. And another thing that you told us was
13 that you took a piece from Rudy Perez' walker?

14 A. That's correct.

15 Q. So which happened first? Did you pass the
16 paperwork back, or did you take a piece from the
17 walker?

18 A. The paperwork went back first.

19 Q. Okay. So let's put that on next.

20 A. Okay.

21 Q. Again, was that you that physically passed
22 the paperwork back?

23 A. Yes.

24 Q. And was anybody else involved in that?

25 A. Not the initial holding the paperwork.

1 But Dan Sanchez was with me at the time, yes.

2 Q. When you passed it back?

3 A. Yes.

4 Q. So I'm going to refer to him as DS. Okay?

5 A. Okay.

6 Q. Paperwork is passed back. You're actually
7 physically doing it, but you're saying that Dan
8 Sanchez was there?

9 A. That's correct.

10 Q. Can you give us a time on that?

11 A. What was the timing that we put -- hold
12 on. What was the time that we put that the
13 paperwork came through? After? 12:00.

14 Q. We put it came out after lunch --

15 A. Okay.

16 Q. -- which ends at noon?

17 A. So the paperwork -- probably read it very
18 quickly and instantly took it back. So it has to be
19 another 15 minutes.

20 Q. All right. So 15 minutes from the entry?

21 A. From when I received it to when I returned
22 it, 15 minutes or less.

23 Q. So I put, "About 15 minutes or less from
24 the above entry," meaning when you got it.

25 A. Correct.

1 Q. And then the next thing of significance
2 that you testified about yesterday was when you took
3 a piece from Mr. Perez' walker; right?

4 A. Yes.

5 Q. Because that was before phone yard. We're
6 going to get phone yard on here.

7 A. Before phone yard.

8 Q. Okay. I'm going to put that you, Mario
9 Rodriguez, physically took piece from walker and you
10 put it in your hamper; right? In your cell?

11 A. Yes.

12 Q. You did that immediately?

13 A. After taking it out of Rudy Perez' house,
14 yes, I put it in the hamper.

15 Q. Okay. So what time are we going to put
16 for that?

17 A. Maybe getting closer, around maybe 1:00.
18 Because there was a little bit going on in between
19 that. 3:00 and 4:00.

20 Q. I just want to look back. Because I think
21 that you testified yesterday that this event -- that
22 that event happened somewhere around 2:00 or 2:30.
23 And I guess I just want to draw your attention to
24 that before we assign a time to this, if you're
25 reevaluating after thinking about it closer.

1 A. No, I'm not reevaluating it. I'm thinking
2 about what happened in between 3:00 and 4:00, and
3 how long it took for that to take place.

4 Q. Right.

5 A. So I'm trying to -- once it gets to 2:30,
6 everything will become tightened up.

7 Q. How would it help if we just started and
8 put the phone yard on there at 2:30? Or when is
9 phone yard?

10 A. See, when the wheelchair program comes
11 back, the phone yard comes in, and we instantly go
12 to lockdown.

13 Q. So it's timed so that when people get back
14 from working at the wheelchair program, the people
15 that weren't working are coming in from phone yard?

16 A. Like maybe 10 to 15 minutes to get your
17 shit together, and then go to lockdown so --

18 Q. And that's a 4:00 p.m. lockdown?

19 A. Yes. So you go to phone yard, you want to
20 leave something, an hour, hour and a half, so you
21 go -- I'm saying --

22 Q. You've got to be back around at least
23 3:45?

24 A. Exactly, exactly.

25 Q. So that would mean you would go to phone

1 yard no later than 2:15, 2:30?

2 A. Around that time, yes.

3 Q. Let's go ahead and put that in. Okay?

4 A. Okay.

5 Q. I'm going to the second page. And we're
6 continuing -- this is March 7; right?

7 A. Yes.

8 Q. All right. So we have phone yard. And
9 that is 2:15, 2:30?

10 A. Around, yes. Around that.

11 Q. And that's when you think that people are
12 let out to phone yard, and then they come back about
13 an hour and a half later?

14 A. I was thinking -- no, because we go to
15 count at 4:00. I think when I took the weapon was
16 around 2:30, something like that. So you go into
17 count at 4:00 so you have to go out for an hour to
18 the phone yard, which is somewhere around 2:45;
19 right?

20 Q. Okay.

21 A. 2:45 -- I'm not good at the math. But
22 2:45, then you come back in about 3:45.

23 Q. So let's change this phone yard and make
24 it 2:45; right?

25 A. That's correct.

1 Q. And then, now that we know, okay, that
2 phone yard was 2:45, I want to make one more
3 notation on that because you did not go to phone
4 yard that day.

5 A. I did not.

6 Q. So I'm going to put on there that you
7 stayed behind.

8 A. Stayed behind.

9 Q. And can we go back now and assign a time
10 to the one before that?

11 A. The weapon?

12 Q. Right.

13 A. I think it's going to get tightened up
14 right here.

15 Q. So if the phone yard was at 2:45, then
16 what time are we going to assign to when you
17 physically say that you took this piece from Mr.
18 Perez' walker and put it in the hamper?

19 A. Around 2:30; 2:25, 2:30.

20 Q. Sorry, I can't fit it all on one page.
21 All right. So it's during the phone yard time that
22 you're saying you're making these weapons in your
23 cell?

24 A. Prior to it and during it.

25 Q. Okay. So I'm just going to put that as a

1 notation.

2 A. Okay.

3 Q. That's your testimony, that before phone
4 yard and during phone yard you were making shanks.

5 A. In between 2:30 and 2:45, I was in the
6 process of breaking the shanks down, yes.

7 Q. Okay. So you started almost immediately
8 once you physically got it --

9 A. Yes.

10 Q. -- is what you're telling us?

11 A. Yes.

12 Q. All right. Now, the next significant
13 thing, I guess, is phone yard comes in, and then
14 there is the 4:00 p.m. lockdown?

15 A. Wheelchair program comes in maybe five
16 minutes before them.

17 Q. So wheelchair program comes in first, and
18 then phone yard?

19 A. About five to ten minutes before phone
20 yard.

21 Q. I made three entries because I think we
22 sort of talked about that. Wheelchair program comes
23 in, the phone yard comes in, and then there is count
24 where everybody is locked down, followed by dinner.

25 A. That's correct.

1 Q. Okay. So let's -- the wheelchair program
2 comes in, according to you, on March 7?

3 A. Around -- about 3:45.

4 Q. And that's significant, according to your
5 testimony, because that's when you say that you
6 talked to Timothy Martinez?

7 A. Correct.

8 Q. And that's when you say that you first
9 told Timothy Martinez that there is this plan to
10 kill Molina?

11 A. That's correct.

12 Q. And I'm going to add that under the
13 wheelchair program coming in, because -- did do you
14 that right when he came back?

15 A. Yes, I was in my room with the curtain up,
16 and I heard the front door open. I went to look at
17 the curtain. I seen the wheelchair program coming
18 back.

19 Q. Did you talk to Timothy Martinez
20 immediately?

21 A. I opened my door, I had the CO open my
22 door, and I went to speak to him immediately.

23 Q. So I added that Timothy Martinez speaks
24 with Mario Rodriguez.

25 A. Okay.

1 Q. And then the next thing is the phone yard
2 comes in?

3 A. Yes.

4 Q. And that's what time?

5 A. Maybe like five minutes after.

6 Q. 3:50, something like that?

7 A. They give you about a 10-minute window to
8 take a shower or whatever you want to do before you
9 go into the 4:00 count.

10 Q. So would you be comfortable if I put
11 approximately 3:50 in the afternoon?

12 A. Well, you're not going to get that exact
13 number, but around that time, yes.

14 Q. About 3:50?

15 A. Right.

16 Q. And then lockdown for count, followed by
17 dinner in your cell?

18 A. Right.

19 Q. What time is the lockdown for count?

20 A. I'm trying to remember. It's 4:00. I'm
21 trying to remember if they serve us our trays or at
22 5:00 we got our trays when we come out. I don't
23 remember.

24 Q. Well, I'll just put "dinner maybe in cell,
25 maybe not."

1 A. Right. I think the setting we were in,
2 the COs didn't like passing out the trays. So it
3 might have happened when we came out.

4 Q. I just put "may or may not be in cell"
5 because we're talking about what you're saying.

6 A. Okay.

7 Q. All right. And then it was -- I have a
8 couple things I want to add. So it was -- after the
9 count, were you unlocked and was everybody released
10 out of their cell?

11 A. At 5:00, yes.

12 Q. So 5:00 p.m. cell doors open for everyone?

13 A. Right. Right.

14 Q. So let's add that. And was it after --
15 I'll put the time over here, too, just because
16 that's how we're doing it. So it was after that,
17 after the cell doors open for everybody, that you
18 first talked -- that you're saying you first talked
19 to Jerry Montoya?

20 A. No.

21 Q. Oh, okay. Correct me, then. When did you
22 first talk to Jerry Montoya about needing to
23 participate?

24 A. After I went upstairs and spoke to
25 Timothy, came back down and gave the weapon to

1 Daniel and Jerry Armenta, and then I went and spoke
2 to Jerry Montoya.

3 Q. So that was before the 4:00 p.m. lockdown?

4 A. After.

5 Q. After. Okay.

6 A. Yes, I had spoken to Timothy again.

7 Q. Wait, because I think that's what I was
8 saying. Maybe we just miscommunicated.

9 A. What I'm getting at is, I'm trying to go
10 who I spoke to first, but you're saying who you
11 spoke to after count. Yes, I spoke to him after
12 count.

13 Q. Why don't we do it that way, then. Doors
14 open at 5:00 p.m. and now everybody is free to move
15 around?

16 A. That's correct.

17 Q. And who are you saying that you spoke with
18 first?

19 A. Timothy Martinez.

20 Q. After count.

21 A. Right. I went to speak to him again.

22 Q. So I put MR, Mario Rodriguez, talks to --
23 and let's just get the order. Timothy Martinez.

24 A. Right.

25 Q. Jerry Montoya?

1 A. Jerry Armenta and Daniel Sanchez.

2 Q. And then?

3 A. Jerry Montoya.

4 Q. In that order?

5 A. Yes.

6 Q. So can I just number that?

7 A. Oh, yes.

8 Q. Because that all happened within a very
9 short period of time.

10 A. Very quickly, yes.

11 Q. Then I think -- do you know the exact time
12 that the assault on Mr. Molina started?

13 A. After the nurse left, you know, I think
14 that's when they were in yellow pod, so it had to be
15 around 5:18, 5:20, somewhere around there, when it
16 went into motions.

17 Q. You're being really specific about it, and
18 I want to talk to you a second about how you know
19 that. You've been asked a lot of questions about
20 viewing the discovery in your state case and in this
21 case; right?

22 A. Right.

23 Q. You were charged shortly after the Molina
24 homicide in some crimes related to that; right?

25 A. That's correct.

1 Q. When were you charged? Do you remember?
2 Was it March 2014?

3 A. Yes.

4 Q. So it was within the month you were
5 charged; right?

6 A. I don't know. I really don't know. It
7 was in March, though. I believe -- that sounds
8 correct.

9 Q. And since then, you've had access to
10 materials that relate to the prosecution of the
11 case?

12 A. That's correct.

13 Q. And so part of those materials -- do those
14 include the video of the assault on Mr. Molina?

15 A. That's correct.

16 Q. And you've watched that, I would assume,
17 hundreds of times?

18 A. No.

19 Q. Tens of times, scores of times?

20 A. Maybe like maybe three or four times.

21 Q. Just only three or four?

22 A. I don't need to watch it. I was there.

23 Q. And there is a time stamp on that video;
24 right?

25 A. I think it has military time?

1 Q. I think it does.

2 A. Right.

3 Q. And so when you were -- when you're saying
4 the assault started around 5:18 --

5 A. Right.

6 Q. -- p.m., is that what you're relying on to
7 give us that specific time?

8 A. I thought this is what we were doing right
9 here. This is helping be more specific based on the
10 5:00, how long it took me to go talk to Timothy,
11 Jerry, and Jerry Montoya.

12 Q. Right.

13 A. So I think the purpose of this is to get
14 specific, and that's what I'm going off.

15 Q. Oh, it totally is.

16 A. Okay.

17 Q. But my point was that at 5:18, it's not
18 like you had a watch that you were timing when the
19 assault began.

20 A. Right.

21 Q. You know that time based on watching the
22 video.

23 A. Exactly.

24 Q. So I'm going to add that. Okay. So the
25 assault on Mr. Molina begins, and we're going to say

1 5:18 p.m.?

2 A. Is it? Is it actually?

3 Q. Well, that was your recollection.

4 A. Okay. Yeah.

5 Q. We could say about?

6 A. 5:18 or 5:20.

7 Q. I guess if we have the video, we can watch
8 that. It's when the video starts, or when you see
9 it on the video?

10 A. 5:18.

11 Q. We can see for ourselves, but your
12 recollection of watching that video is that it's
13 around 5:18; right?

14 A. Not just of watching the video, but that
15 helps, yes.

16 Q. Do you want to put "about"?

17 A. About 5:18, 5:20, I think the assault
18 takes motion.

19 Q. All right. All right. I think I'm done
20 with that chart.

21 So is there anything you want -- what I
22 want to do is, I want to mark this as Defendants'
23 exhibit next in order. It's a two-page exhibit. So
24 this is going to be marked Defendants' Exhibit EY,
25 and I guess I want to give you a minute to look over

1 it to make sure it's correct before I try to enter
2 it into evidence, because we can't make any changes
3 once we enter it. I'm going to bring it up to you.

4 A. I think I followed it on the monitor.

5 Q. All right. Do you want to take a minute
6 just to look it over?

7 A. I should, huh, since I didn't do the last
8 stuff, huh?

9 Q. Just let me know when you're done. Take
10 your time. I don't want to rush you.

11 A. That looks about right.

12 Q. All right. Is there anything you want to
13 change?

14 A. No.

15 Q. Okay.

16 MS. JACKS: So Your Honor, I would offer
17 Defendants' Exhibit EY into evidence at this time,
18 and I'll staple the two pages together.

19 THE COURT: Any objection, Ms. Armijo?

20 MS. ARMIJO: For demonstrative purposes,
21 we don't object. Obviously, this wasn't provided
22 earlier. As long as we can get a copy on the break.

23 MS. JACKS: Then I won't staple it. I'll
24 scan it at the break and give you a copy.

25 THE COURT: Is it all right for it to come

1 in for those purposes, Ms. Jacks?

2 MS. JACKS: That means the jury gets it,
3 right, when they deliberate?

4 THE COURT: Any problem with that?

5 MS. ARMIJO: No.

6 THE COURT: All right.

7 MS. JACKS: That's great. Thank you.

8 THE COURT: Anybody else have any
9 objections? All right. Defendants' Exhibit EY will
10 be admitted into evidence.

11 (Defendants' Exhibit EY admitted.)

12 BY MS. JACKS:

13 Q. All right. I'm going to move to another
14 area, but thank you for helping me do that.

15 Yesterday, you talked to us about the
16 notes, and we actually just -- we just sort of went
17 through that. But the notes that you say you passed
18 to Mr. Urquizo and that Mr. Urquizo -- the note that
19 he passed back to you on March 6 of 2014. Do you
20 recall that testimony?

21 A. Along the one that I responded to?

22 Q. Right, that we just went through.

23 A. Yes, two notes and one from him.

24 Q. Right. Just so that we're clear. So the
25 notes that we're talking about are the notes that

1 are referenced in number 2, 3, and 4.

2 A. Yes, ma'am.

3 Q. March 6, 2014. Those notes.

4 A. Yes, ma'am.

5 Q. Okay. The first time that you ever
6 mentioned passing notes like that was yesterday,
7 wasn't it?

8 A. I don't recall. I believe I mentioned it
9 before, but I don't recall.

10 Q. Okay. You've had six interviews with law
11 enforcement since you made the decision to become a
12 Government witness, haven't you?

13 A. If that's what's on record, yes.

14 Q. Well, let's go through it. I don't want
15 to be putting words in your mouth. Your first
16 interview with the Government was on October 24,
17 2017; right?

18 A. Yes.

19 Q. And you had -- and that was just the
20 prosecutors and your lawyer and you?

21 A. Right.

22 Q. And then on November 1st of 2017, you
23 actually sat down again with the prosecutors and
24 your lawyer, but this time the FBI was there?

25 A. Yes, ma'am. November 1st; right?

1 Q. Right. And then on November 16 of 2017,
2 you sat down with FBI Agent Acee and Ronald Sanchez
3 and some correctional officers from the Security
4 Threat Intelligence Unit at the Penitentiary of New
5 Mexico, didn't you?

6 A. That's correct.

7 Q. And that was a meeting that you're saying
8 was initiated by Ronald Sanchez?

9 A. Yes, ma'am.

10 Q. But that was a meeting and what was
11 discussed was sort of how Daniel Sanchez might be
12 convinced to either cooperate with the Government or
13 plead guilty; right?

14 A. Yes.

15 Q. And the benefit or the reason that you
16 participated in that meeting was, at least in part,
17 because of what the Government told you about what
18 benefit you might get if Mr. Sanchez cooperated or
19 pleaded guilty; right?

20 A. The initial one was Ronald Sanchez asked
21 me to speak to his brother for him. I told him
22 about the benefit. And I told him if Dan came over,
23 that I would let the Government know that I had no
24 interest in it. But, yes, there is a benefit.

25 Q. Well, I mean, that's not really responsive

1 to my question.

2 A. Okay. Go ahead.

3 Q. I am not going to move to strike the
4 answer, but I'm going to ask you to pay attention to
5 what I'm asking you.

6 A. Right.

7 Q. When you sat down at that meeting with
8 Ronald Sanchez and the Government, there was a
9 potential benefit for you in your mind, wasn't
10 there?

11 A. There is, yes.

12 Q. And specifically, the Government told you
13 that you will get more credit for your participation
14 as a Government witness if you can convince somebody
15 else to be a Government witness; right?

16 A. Not necessarily that.

17 Q. Well, that's one way you could get extra
18 credit; right?

19 A. I guess, yes.

20 Q. And another would be if you could convince
21 somebody else to plead guilty.

22 A. That's correct.

23 Q. So that would be beneficial to you.

24 A. Yes.

25 Q. And so that was, at least in part, your

1 motive for participating in that meeting.

2 A. No.

3 Q. That wasn't any part of it?

4 A. It was not any part of it.

5 Q. Now, do you know why it was that the FBI
6 or the Government was so interested in convincing
7 Mr. Sanchez to plead guilty?

8 A. I don't know if they were.

9 Q. Okay. Well, you'll admit that meeting was
10 over an hour?

11 A. Yes.

12 Q. And a lot of the discussion at that
13 meeting was how to motivate, shall I say, Mr.
14 Sanchez to plead guilty.

15 A. I think it was more or less Ronald trying
16 to figure out what he could bring back to his
17 brother and motivate him to leave, yes.

18 Q. I mean, part of the thing that was
19 discussed is perhaps arranging some way for Ronald
20 to do federal time, or get out of jail, get out of
21 jail at a set date; right?

22 A. Not get out jail. A recommendation for
23 parole.

24 Q. Okay. A recommendation for parole.

25 A. Yes, ma'am.

1 Q. And some sort of release, some sort of
2 negotiation with the State Department of Corrections
3 to agree to release Ronald to then do a determinant
4 federal sentence?

5 A. That wasn't the area. I don't know if
6 that's possible, but it was something that he was
7 interested in asking if it was possible. He was
8 looking for his options.

9 Q. And that was discussed.

10 A. Yes, ma'am.

11 Q. So that was the third meeting you had with
12 law enforcement?

13 A. Yes.

14 Q. And then you had a meeting on December 12,
15 2017, with law enforcement agents from the STIU
16 office at the Penitentiary of New Mexico?

17 A. And who else?

18 Q. Just them.

19 A. STIU?

20 Q. Yeah. December -- let me look at my notes
21 to make sure I'm right. December 12, 2017, with
22 Chris Cupit?

23 A. Oh, yes. He's not STIU.

24 Q. I'm sorry. He's a correctional officer,
25 though; right?

1 A. No.

2 Q. I'm sorry. What is Mr. Cupit?

3 A. I think he's an FBI task force officer.

4 Q. Okay. And STIU Captain Sergio Sapien?

5 A. Yes, he was there.

6 Q. So that's the fourth meeting you had with
7 law enforcement; do you agree?

8 A. Correct, yes.

9 Q. And then on January 22 of 2018, did you
10 sit down again with the U.S. Attorneys and FBI?

11 A. Where at? January 22?

12 Q. Yes, at the U.S. Attorney's Office in Las
13 Cruces, New Mexico.

14 A. That was here.

15 Q. January 22, 2018.

16 A. I think I might have, yes.

17 Q. Well, do you have some -- do you have
18 some --

19 A. I think that was the one I was in shock
20 over it. I thought I was coming to a pretrial to
21 testify, and I was in shock.

22 Q. You thought you were coming to testify,
23 and it was just a meeting?

24 A. There was a lot of anxiety, yes.

25 Q. So you agree with me that meeting

1 happened?

2 A. I remember that now, yes.

3 Q. And then you had another meeting with
4 Maria Armijo, the U.S. Attorney Maria Armijo and
5 somebody from the FBI on February 3?

6 A. That was on Saturday; right?

7 Q. Right.

8 A. I don't remember any FBI in there. I
9 remember Maria and just correctional officers.

10 Q. Okay. So that was the sixth meeting with
11 law enforcement.

12 A. Yes.

13 Q. I've been numbering them as we've been
14 going.

15 A. Yes.

16 Q. Okay. So did you say anything on October
17 24, 2017, about passing notes to Mr. Urquizo on
18 March 6, 2017?

19 A. January 22?

20 Q. Wait, I'm going to go through them in
21 order. Okay?

22 A. Okay.

23 Q. And the question is: Did you say anything
24 during any of these meetings, as I tick them off,
25 about passing notes to Mr. Urquizo on March 6, 2014?

1 Okay? Did you say anything on October 24, 2017?

2 A. I don't believe I did.

3 Q. Did you say anything on November 1st,
4 2017?

5 A. I don't know if I did. I don't believe
6 so.

7 Q. Did you say anything on November 16, 2017,
8 about that?

9 A. No. With Chris Cupit? No.

10 Q. Did you say anything about that on
11 December 12, 2017?

12 A. That was the one --

13 Q. That was the one actually I think with
14 Cupit and --

15 A. Oh, the first one was Ronald Sanchez.

16 Q. Right.

17 A. Okay. Yeah. No.

18 Q. So let's go back. November 16 was the one
19 with Ronald Sanchez. You didn't say anything during
20 that meeting about that?

21 A. No.

22 Q. December 12. That was the one with Chris
23 Cupit and Sapien. Did you say anything about
24 passing notes to Mr. Urquizo in that meeting?

25 A. No, ma'am.

1 Q. What about January 22? That was the
2 surprise meeting.

3 A. That was the one I forgot. I think it
4 came up in that one where someone was alleging that
5 I had called someone. And that's when I remember
6 passing the letter. I think I brought that up
7 there.

8 Q. You think you did?

9 A. Yes, ma'am. That was the one I couldn't
10 remember. That was the one I was in shock for, yes.

11 Q. Have you reviewed the report of that
12 meeting?

13 A. I have not.

14 Q. And what about February 3, 2017? Did you
15 discuss passing notes to Lupe Urquizo in that
16 meeting?

17 A. I do not remember.

18 Q. I think we covered this, so I want to kind
19 of go faster, this topic. You're saying that you
20 got the paperwork passed to you under that emergency
21 door. And I think you made it clear when we filled
22 out the timeline that that was passed directly to
23 you, and you were the only person at the door to
24 receive it.

25 A. I was the only one that received it.

1 Q. Okay. At the time that you say that
2 happened -- excuse me. Are you okay?

3 A. Sorry.

4 Q. Do you need water?

5 A. I drank some water too fast.

6 Q. At the time that that happened, where was
7 Timothy Martinez?

8 A. At work.

9 Q. So that would be at the wheelchair
10 program?

11 A. Yes, ma'am.

12 Q. And is the wheelchair program, the place
13 where somebody works in the wheelchair program -- is
14 that somewhere outside of unit 1-A?

15 A. Yes.

16 Q. So he wasn't even in the unit.

17 A. No, ma'am. That was when the paperwork
18 was passed; right?

19 Q. That's when you're saying the paperwork
20 was passed.

21 A. Yes, ma'am. He wasn't there.

22 Q. And if we can just be clear. The first
23 time that you're claiming you have said anything to
24 Mr. Martinez about paperwork is when he got back
25 from the wheelchair program that day.

1 A. I think, yeah, when I told him -- when I
2 told him it arrived? Yes, I told him it arrived.
3 Yes.

4 Q. And that was approximately, according to
5 our chart, Exhibit EY, page 2, that was about 3:45
6 in the afternoon on March 7.

7 A. Where are we at? Yeah, when he came back
8 from wheelchair program?

9 Q. Yes.

10 A. Yes, ma'am. I know he knew of the rumors
11 of it, but we never went into really that. This is
12 the first time --

13 Q. Mr. Rodriguez, there is no question
14 pending.

15 A. I was just explaining.

16 Q. Now, this paperwork that you say that was
17 passed. I just want you to tell us what you're
18 saying it looked like. Just in general, how many
19 pages was it? Was it a police report? Was it court
20 documents? Was it on a form? I mean, I know that's
21 a compound question. But give us your description.

22 A. What legal work looks like?

23 Q. Not just legal work in general. This
24 legal work you say you saw on March 7, 2014.

25 A. It came through under the door in a manila

1 envelope.

2 Q. Okay.

3 A. It was -- I know it was sealed, and torn
4 at the top. So it was kind of tattered.

5 Q. So it was like an envelope that had been
6 sent through the mail?

7 A. It looked like -- well, we get manila
8 envelopes and we tear them open and use them for
9 other things. Like say, if it says legal work,
10 we'll tear it up and put whatever else in there.

11 Q. Right. You reuse it.

12 A. Yes.

13 Q. So it was in that kind of envelope?

14 A. Envelope. And it came under the door.

15 Q. I'm interested in what was in the
16 envelope.

17 A. Yes, I'm going to get there. When I was
18 there with me and Sanchez when I opened it, it was
19 Lupe Urquizo's -- an appeal to one of his cases he
20 picked up in Clovis. And we were flipping through
21 the pages. And we came across a police report. I
22 believe it was from Jesse Sosa's case.

23 Q. So it was tucked inside of some paperwork,
24 according to you, tucked inside some paperwork of
25 Lupe's appeal?

1 A. His appeal was detached with a staple,
2 then it was slid in there, and the staple was
3 reattached to it, and folded over, as if it was one
4 document.

5 Q. Okay. And the document appeared to be a
6 police report?

7 A. Appeared to be a police report.

8 Q. And was it from what police agency?

9 A. The LCPD.

10 Q. So that would be Las Cruces Police
11 Department?

12 A. Yes.

13 Q. And was it on -- how many pages was it?

14 A. I just remember -- I don't remember
15 exactly how many pages. I just remember the main
16 page that was -- myself and Daniel read. So it had
17 to be maybe, like, three to four pages. It wasn't a
18 full, full police report.

19 Q. So it was around three or four pages. It
20 was a partial police report; is that fair?

21 A. If -- well, I can't say that, but --

22 Q. You said it wasn't a full police report.

23 A. It wasn't a full discovery. It was just
24 like an interviewing officer out of the discovery,
25 the report.

1 Q. And was it on white paper? Was it on some
2 sort of form? Was it on colored paper?

3 A. I think all legal work comes on white
4 paper, so it was on white paper.

5 Q. Okay. And was it a form? You know how
6 sometimes, like, you'll get a piece of paper and
7 there are sections to type things in on?

8 A. No, I do not.

9 Q. Haven't you seen police reports where
10 they'll have, like, a logo in one place and have
11 lines and the officers fill in --

12 A. No, it was not one of those.

13 Q. Okay. So what was it?

14 A. It was a basic interview.

15 Q. So just a plain white piece of paper with
16 typing on it?

17 A. Plain white piece of paper with a stamp on
18 the front, where you know it came from a courthouse
19 when they stamped it.

20 Q. Okay, wait. Now I'm confused. Because
21 you said it was a police report, and police reports
22 come from police stations.

23 A. Well, they have stamps on them, like time
24 stamps. When we get paperwork, we always look for
25 the time stamp. Like a J&S has a time stamp on it.

1 Q. Okay. So are you saying now that it's
2 court paperwork, or is it a police report that had a
3 time stamp on it?

4 A. It's a police report.

5 Q. I'm just confused.

6 A. Well, paperwork is paperwork to me. I
7 don't know what the difference of it is, you know,
8 so --

9 Q. You've seen a lot of police reports in
10 your life, haven't you?

11 A. That's why paperwork is paperwork.

12 Q. And you've seen a lot of court paperwork
13 in your life, haven't you?

14 A. That's correct.

15 Q. So you know the difference.

16 A. I think they're all the same.

17 THE COURT: Ms. Jacks, let me talk to the
18 jury just a second.

19 It's a little early to break for lunch,
20 but if you want to, we can go ahead and break for
21 lunch. If you'd like to take a break, 15 minutes,
22 then work through the lunch hour and kind of
23 schedule things like we did yesterday, we can do
24 that. How many prefer the schedule we had
25 yesterday? How many of you want to go to lunch now?

1 All right. Well, let's take a 15-minute
2 break, and we'll come back, and then we'll work till
3 about 1:30 and take our lunch break.

4 All rise.

5 (The jury left the courtroom.)

6 THE COURT: All right. We'll be in recess
7 for about 15 minutes.

8 (The Court stood in recess.)

9 THE COURT: Let's go on the record.
10 Anybody need anything while we're waiting for the
11 jury to be brought in? From the Government? Ms.
12 Armijo, Mr. Castellano?

13 MR. CASTELLANO: No, Your Honor.

14 THE COURT: Anything from any of the
15 defendants? Anything we need to discuss, help you
16 with?

17 All right. All rise.

18 (The jury entered the courtroom.)

19 THE COURT: Please be seated.

20 Mr. Rodriguez, I'll remind you that you're
21 still under oath.

22 THE WITNESS: Yes, sir.

23 THE COURT: Ms. Jacks, if you wish to
24 continue your examination of Mr. Rodriguez, you may
25 do so at this time.

1 BY MS. JACKS:

2 Q. Mr. Rodriguez, I tried to make a note.

3 When we were recessed, we were talking about the
4 paperwork --

5 A. Right.

6 Q. -- that you testified about yesterday.
7 And I think where we were was, we were trying to
8 determine whether -- what your perception or what
9 your testimony is about what that paperwork actually
10 was.

11 A. Right.

12 Q. And we were going back and forth a little
13 bit about whether it was a police or a court
14 document. So I don't want to belabor the issue, the
15 point, but I guess I want to hear what your
16 testimony is about that paperwork that you're saying
17 that you saw.

18 A. I never thought about it until now, when
19 you bring that up. It does make sense it was a
20 court document, a copy of the original copy.

21 Q. So you think now --

22 A. That makes sense to me.

23 Q. So you're sort of changing maybe what you
24 said before?

25 A. I never thought to describe it as exactly

1 what it was. I just knew it was paperwork.

2 Q. Nobody ever asked you to describe exactly
3 what it was?

4 A. Just what it said.

5 Q. All right. We're going to get to that in
6 a minute. But before -- now, before me asking you
7 these questions, nobody from law enforcement ever
8 asked you to describe what the paperwork looked
9 like?

10 A. Not to the full extent that you're saying,
11 putting the exact label on where it came from.
12 Because if it's postmarked -- I received paperwork
13 from courthouses, and they have, like, a time stamp
14 on it. I never disclosed that, never really went
15 into that. I just said it was paperwork.

16 Q. So now, based on the questions that I'm
17 asking you, your testimony is that, well, maybe it
18 wasn't a police report; maybe it was a court
19 document?

20 A. Oh, it's a police report. But it's --
21 maybe it's a copy of the original that was in the
22 archives in the county.

23 Q. So --

24 A. It's a police report.

25 Q. When you say it's a police report, was

1 there something about the format, or was there a
2 logo on the paperwork, or a title, or you know, a
3 phone number, contact information for Las Cruces PD
4 on it that made you think it was a police report?

5 A. It was a statement. It was a statement of
6 a police report.

7 Q. You mean, it was a statement of an
8 individual like would be in a police report?

9 A. Exactly.

10 Q. But physically, was it on paper or a form
11 that looked like an official police report?

12 A. Yes.

13 Q. Okay. And then you're also saying it
14 looks like something that was filed in court,
15 because of the time stamp.

16 A. A copy of it.

17 Q. And did you say something about that
18 according to you, this paperwork had Javier Molina's
19 name in bold?

20 A. It was in bold letters with an underline
21 on it.

22 Q. With an underline.

23 A. Right.

24 Q. And was that the only thing that was
25 bolded and underlined, according to you?

1 A. I don't remember if any other names were
2 bold like that, but that was just his statement.

3 Q. And were there any other colors besides
4 black and white on the documents you say you saw?

5 A. Not that I remember.

6 Q. Now, is it your testimony that you read
7 this?

8 A. Yes.

9 Q. And what is it -- or what did it say about
10 the crime that Molina had allegedly committed or was
11 being questioned about?

12 A. I think it was a robbery but -- it sounded
13 like a purse-snatching to me. But the charge was a
14 robbery.

15 Q. Have you previously characterized it as a
16 strong-armed robbery?

17 A. No. Strong-armed robbery?

18 Q. Yeah.

19 A. I don't know the difference.

20 Q. So the documents that you read, was Molina
21 allegedly -- or giving -- in the documents, did they
22 say that Molina was saying something about the
23 participation of somebody else?

24 A. Yes.

25 Q. In this robbery?

1 A. Right.

2 Q. And was it a statement, if you know or if
3 you remember -- based on what your testimony is, was
4 it a statement to a police officer? Was he making
5 these comments to a police officer?

6 A. It was a police report.

7 Q. Okay.

8 A. I think police reports are done by police
9 officers.

10 Q. So it was -- the document that you saw was
11 written by a police officer.

12 A. I didn't see no one write it, but you
13 know, it's a police report.

14 Q. It seemed like it was written by a police
15 officer?

16 A. Right.

17 Q. And Molina was making a statement to the
18 police?

19 A. That's correct.

20 Q. After the offense had been committed?

21 A. That's correct.

22 Q. And was it a statement, could you tell,
23 according to what your statement is, where the
24 statement was being made? In other words, was he
25 being questioned back at the police station, or was

1 he arrested running away from the scene of the
2 crime, or what?

3 A. I don't recall where it was, where he was
4 being questioned, no.

5 Q. You don't recall those details?

6 A. I recall some details of it, yes. Those
7 details I don't recall.

8 Q. What are the details that you're telling
9 us you recall?

10 A. That he was the driver of a vehicle, that
11 somebody got out of the backseat of the car, came
12 running back, and told him to go, go, go; that he
13 took off; that he handed -- I don't know if he
14 described it as a purse, but that he gave something
15 to the guy in the passenger seat, and the guy threw
16 it out of a window. I want to say the road, the
17 street, was Mesquite Road, or something. I don't
18 recall exactly what road it was. But I think it was
19 Mesquite Road.

20 Q. Was Molina, according to these documents
21 that you said you read -- was he supposedly saying
22 that somebody else had committed this
23 purse-snatching?

24 A. That's correct.

25 Q. And that somebody else threw the purse or

1 whatever out of the car window?

2 A. That's correct. He never disclosed who.
3 He just disclosed the actions of them. And I
4 believe they identified him by his car. So they
5 later went to investigate if he had the car, because
6 it had different license plates on it. I believe
7 that was on the other page.

8 Q. And you're saying this is all in the
9 several pages, the three or four pages that you're
10 saying you read?

11 A. That's correct.

12 Q. Now, I want to move on to a different
13 topic, and that's just on the topic of shanks.

14 A. Okay.

15 Q. Are shanks common in prison?

16 A. Yes, ma'am.

17 Q. Among all inmates, or only inmates that
18 are members of prison gangs?

19 A. Well, the only members that I've ever
20 lived around that carried shanks on in general is
21 gang members, yes.

22 Q. So among prison gang members, shanks are
23 commonly carried on a daily basis?

24 A. We don't really disclose who have them
25 because we're worried. But yes, they're supposed

1 to, yes.

2 Q. So on any given day there would be shanks
3 in unit 1-B, for example?

4 A. I'm pretty sure there's maybe -- in the
5 whole unit?

6 Q. Yeah.

7 A. Oh, yeah. Everyone has shanks, pretty
8 much. Yeah.

9 Q. Okay. So I misspoke. Because I said unit
10 1-B and that's confusing. It's Unit 1-A, B pod. On
11 any given day there would be shanks in Unit 1-A, B
12 pod?

13 A. I knew of three.

14 Q. That's what I'm going to get to next. But
15 in unit 1-A on any given day, there would be shanks
16 in every pod?

17 A. There would be at least four or six people
18 with shanks in a pod.

19 Q. And I think you told us yesterday that you
20 actually possessed a shank? I think you've been
21 shown the icepick shank that was in your shoe.

22 A. Yes, ma'am.

23 Q. And you possessed that on March 7 of 2014?

24 A. And prior.

25 Q. And prior?

1 A. Yes, ma'am. I bring that from the PNM
2 North facility in my shoe.

3 Q. You brought that back with you in December
4 of 2013?

5 A. I had it in Level 6, 5, and 4, yes.

6 Q. And was it always just secreted there in
7 your shoe?

8 A. When I was in Level 5, when I would come
9 out to tier time, there was rival gang members on
10 the top tier, and I would have it tucked. I would
11 roll my sock down and put it where the sock was
12 covering a little bit in the form of my foot. So
13 when I was strip-searched, they couldn't see it.
14 And I would have the handle on it and be prepared to
15 use it.

16 Q. So the bottom line is, when it's there in
17 your shoe, that's really for transporting it, not
18 using it; right?

19 A. Yes, ma'am.

20 Q. I'm sorry. We overlapped.

21 A. Exactly.

22 Q. But you physically possessed that shank
23 for some period of time, it sounds like.

24 A. Yes.

25 Q. And when you were leaving your cell,

1 sometimes you would ready yourself to be able to use
2 that shank if the need arose?

3 A. Not in this -- not in the Southern
4 facility, no.

5 Q. But you described to us, I guess, when you
6 were at the North; right --

7 A. South facility.

8 Q. -- South, that you actually did that, you
9 would ready yourself to have it, if the situation
10 presented itself?

11 A. Yes, ma'am.

12 Q. All right. So that's one of the shanks
13 you knew about on March 7 of 2014 --

14 A. That's correct.

15 Q. -- in B pod?

16 A. That's correct.

17 Q. And you told us a little bit about the
18 fact that Timothy Martinez had gotten a shank from
19 Javier Molina that day?

20 A. Yes.

21 Q. And that's the shank that you took on
22 March 8 up to PNM North?

23 A. It was in my possession from March 7, yes,
24 and forward.

25 Q. And when was it, if you know, that Timothy

1 Martinez got that shank from Javier Molina -- or
2 I'll ask that question.

3 A. I do not know. I did not ask.

4 Q. Okay. But Timothy Martinez told you that
5 that was Molina's shank.

6 A. Yes.

7 Q. So that's the second shank that you know
8 about in blue pod that day?

9 A. That's correct.

10 Q. Now, were you aware of a shank that was
11 hanging -- let me go back.

12 MS. JACKS: Your Honor, I have an example
13 that's been marked Defendants' K-18. May I approach
14 and show it to the witness?

15 THE COURT: You may.

16 BY MS. JACKS:

17 Q. Have you had a chance to look at it?

18 A. Yes.

19 Q. So Mr. Rodriguez, showing you what's been
20 marked as Defendants' Exhibit K-18, is that a
21 photograph of a shank?

22 A. Yes, it's a photograph of a shank.

23 Q. And my question is: Is that a shank that
24 you knew existed in blue pod on March 7, 2014?

25 A. No, ma'am.

1 Q. You talked a little bit about Timothy
2 Martinez and his work at the wheelchair program.

3 A. That's correct.

4 Q. Can you just briefly tell us what the
5 wheelchair program is?

6 A. I didn't work there. I don't know. I
7 don't really know.

8 Q. You must have some idea. If he told you
9 he worked there, you must have some idea about what
10 he was supposedly doing.

11 A. I think building wheelchairs for people in
12 third-world countries.

13 Q. Okay. Were individuals in blue pod
14 bringing back materials for shanks from the
15 wheelchair program?

16 A. Yes. Two individuals were.

17 Q. And who were those two individuals?

18 A. Dale Chavez and Jason Wright.

19 Q. And on March 7 of 2014, were there shanks
20 in blue pod that had originated -- or that the
21 materials had originated from the wheelchair
22 program?

23 A. Not that I'm aware of.

24 Q. You've been asked some questions about
25 your access to discovery. And I just want to be

1 clear about what you had and when you had it.

2 When you were charged in the state case,
3 shortly after the Molina homicide, did you get
4 access to various reports and statements related to
5 the investigation of that crime?

6 A. On the state level?

7 Q. Yes.

8 A. Yes, ma'am, I had the discovery.

9 Q. And was -- you had all the discovery that
10 was generated in that case?

11 A. Yes.

12 Q. In paper format?

13 A. Correct.

14 Q. And that included witness statements?

15 A. That's correct.

16 Q. And then when you were charged in this
17 case, did you get access to additional discovery
18 that was more than what you had in the state case?

19 A. In the Molina case?

20 Q. In the federal racketeering indictment.

21 A. Yes, but you said the Molina charge?

22 Q. Yes. Under Molina or the Sosoya charge?

23 A. Yeah, I never received Sosoya discovery.
24 I was never charged with that charge on the state
25 level.

1 Q. No, I'm talking about in the federal case
2 now.

3 A. Oh, yeah. I received -- yeah. I never
4 had seen no documents on the Sosoya case prior to
5 the VICAR. In the Molina case I think I got -- the
6 only thing that was new in there were 302s and
7 confidential material.

8 Q. Okay. Additional investigative things
9 that you were not provided while the state case was
10 being prosecuted?

11 A. Yes. Federal documents, yes.

12 Q. And then you also got access to other
13 materials related to other crimes, one of which
14 involved the Sosoya charge; right?

15 A. Yes, ma'am.

16 Q. And then a bunch other crimes that were
17 not involving you whatsoever?

18 A. No, they didn't involve me at all.

19 Q. But you had them?

20 A. I had them, yes.

21 Q. And you had access to them?

22 A. Unfortunately, yeah.

23 Q. And the federal discovery came to you on
24 what we've been calling a tablet?

25 A. Yes, ma'am.

1 Q. It's a computer?

2 A. It's a computer; it's a flat-screen
3 computer.

4 Q. And did it also include video and audio
5 clips?

6 A. Yes, ma'am.

7 Q. Did it also include phone calls?

8 A. It did.

9 Q. Photographs?

10 A. Photographs.

11 Q. All sorts of investigative documents?

12 A. It sure did.

13 Q. And that tablet is updated or has been
14 updated every so often so you get the newest
15 materials?

16 A. I think my tablet has been updated twice.

17 Q. And you still have it today.

18 A. I still have it today.

19 Q. Where you're housed or where you've been
20 housed during the pendency of your case up to today,
21 do you have access to your tablet in your cell?

22 A. Yes.

23 Q. And do you have access to your tablet 24
24 hours a day, seven days a week?

25 A. No.

1 Q. Can you just tell us briefly what
2 limitations are placed on your access?

3 A. There were restrictions when we first got
4 them. The restrictions were: We don't have them at
5 night time. They were only given to us at 9:00 and
6 they were taken from us at 10:00.

7 Q. Let me stop you. 9:00 a.m. and they were
8 taken at 10:00 p.m.?

9 A. Yes, ma'am.

10 Q. Okay. And then that changed?

11 A. That changed. The lawyers, I believe,
12 filed a motion for us to have it whenever we needed
13 it. Then the facility got a little bit more lax on
14 it, and we were able to charge them whenever we
15 wanted to. So we would have to go through the
16 tablet all day, then get it charged. So now we can
17 do it whenever we want to charge it. But we were
18 losing it four or six hours a day, due the officers
19 being too busy to bring it back to us.

20 Q. Okay. For the charging?

21 A. Right.

22 Q. And somehow that problem got worked out
23 and you basically have it whenever you want it;
24 right?

25 A. Now, if you have an outlet in your room,

1 you pretty much have it whenever you want it.

2 Q. Mr. Rodriguez, do you consider yourself an
3 intelligent and creative person?

4 A. I've been told that.

5 Q. You've been taking classes -- or you were
6 taking classes at a prison?

7 A. Where?

8 Q. For reentry?

9 A. In what year?

10 Q. Well, are you familiar with an instructor
11 by the name of Keith Johnson?

12 A. He's a good friend of mine.

13 Q. And who is Keith Johnson?

14 A. He was a teacher that was brought in for a
15 project by a teacher named Ms. Robero. And he was
16 teaching reentry with the violent crowd in the
17 North. And he was a climber -- a mountain climber,
18 I believe, a philosopher, and talked about life.

19 Q. Was he somebody that encouraged you to do
20 creative writing?

21 A. He's the first person to ever come to me
22 and tell me I was kind of good at something, yes.

23 Q. He said you were good at it; right?

24 A. Very good at it.

25 Q. In fact, I think you were his most

1 outstanding student.

2 A. Yes, that's what he says.

3 Q. And you wrote quite a bit of things for
4 his class, didn't you?

5 A. For a book I was writing, for his class,
6 for a pin project that was in relation to the
7 Arizona State University, for my personal
8 self-growth. And, yeah, we exchanged letters.

9 Q. Okay. Have you used your story-telling
10 skills in connection with your criminal cases?

11 A. I have.

12 Q. And specifically, I guess I want to direct
13 you to, did you use your story-telling skills in
14 connection with your state case involving yourself
15 and Jerry Armenta and Jerry Montoya?

16 A. The Molina case?

17 Q. Yes.

18 A. Never.

19 Q. You never --

20 A. Never.

21 Q. Did you -- let's go back to the time of
22 this state case.

23 A. Okay.

24 Q. I want you to think carefully about this.
25 Would you agree with me that there was a time --

1 well, first of all, Jerry Armenta and Jerry Montoya
2 were charged with the murder of Javier Molina;
3 correct?

4 A. That's correct.

5 Q. And were you guys housed together during
6 the pendency of that case, at least for some period
7 of time?

8 A. I was never housed with Armenta. I was
9 housed with Montoya on one occasion, yes, in the
10 state case.

11 Q. In the state case, yes.

12 A. Yes, ma'am.

13 Q. I'm going back to between March 7 of 2014
14 and the federal indictment in December of 2015.

15 A. Yes, ma'am. We were in 3-A, Q pod. I was
16 on the bottom tier. He was on the top tier.

17 Q. Are you aware of a letter that Jerry
18 Armenta wrote to Jerry Montoya's lawyer?

19 A. I wasn't in the loop directly in that, but
20 I heard about it.

21 Q. All right.

22 A. I didn't want nothing do with that going
23 on.

24 Q. I'm going to ask you a few questions about
25 that. I'm going to give you a chance to be heard.

1 So my question is -- I think you answered the
2 question. You're aware of the letter.

3 A. Right.

4 Q. And was the letter an effort by Jerry
5 Armenta to tell a story about the Molina homicide
6 that exonerated Jerry Montoya?

7 A. That's correct, from what I heard, yes. I
8 believe.

9 Q. So he wrote a letter to Montoya's lawyer
10 to help to try to get Montoya out of the charges?

11 A. That's correct.

12 Q. And as a result of that letter, did Jerry
13 Montoya's lawyer file a motion in court to designate
14 Jerry Armenta his witness?

15 A. I think I was in court that day and I
16 think there were doing something like that.

17 Q. And that brings me back -- even if you
18 weren't housed together, you guys were able to
19 interact when you had court appearances together;
20 right?

21 A. They had me away from Armenta. He was
22 on -- they didn't want him near me. But Montoya, I
23 had interacted with Montoya.

24 Q. Are you aware -- I'm talking about the
25 letter now that Jerry Armenta wrote to Jerry

1 Montoya's lawyer. Did Jerry Armenta write that
2 letter and swear under oath that it was the truth?

3 MS. ARMIJO: Objection, foundation.

4 THE COURT: Ask if he knows these
5 questions before we ask him to answer them.

6 BY MS. JACKS:

7 Q. I'm asking you if you know.

8 A. Not directly.

9 THE COURT: Just a yes, no, answer on
10 that.

11 A. Can I have a question about something?

12 Q. Sure.

13 A. If I was told by another person about it,
14 it's a no?

15 THE COURT: No.

16 A. That's a no.

17 Q. Let's go one step further. Did the letter
18 become part of the discovery in either the state
19 case or this case?

20 A. Not that I received.

21 Q. So your testimony is that you've never
22 seen it?

23 A. In the VICAR case I seen a letter, but --
24 let me see. I seen a letter that he sent through
25 interprison mail to him. I never seen the letter

1 that they --

2 Q. The letter to the lawyer?

3 A. I never seen that.

4 Q. Okay. As a result of the letter, did
5 Jerry Armenta sit down for a deposition with the DA
6 and Jerry Montoya's lawyer?

7 A. I don't know.

8 MS. ARMIJO: Objection, foundation.

9 THE COURT: Well, ask if he knows the
10 answer.

11 BY MS. JACKS:

12 Q. Do you know whether he did?

13 A. Who sat down with who?

14 Q. That Jerry Armenta sat down for a
15 deposition with the district attorney and Jerry
16 Montoya's lawyer.

17 A. What is a deposition?

18 Q. Oh, I'm sorry. When they ask him
19 questions about the offense; what his testimony is
20 going to be.

21 A. Is that working with the --

22 Q. I'll direct your attention to a specific
23 date.

24 A. Okay.

25 Q. Are you aware of a recorded deposition

1 between Jerry Armenta -- well, where Jerry Armenta
2 was being asked questions, in which Jerry Montoya's
3 lawyer and the district attorney participated?

4 A. No.

5 Q. Okay. Was that provided to you either as
6 part of discovery in the federal case, the state
7 case, or investigative materials from your lawyer?

8 A. There is a video, but it's of him
9 cooperating with the STIU and the Government. I
10 don't think Jerry Montoya's lawyer was present for
11 that. That's the only video I've ever seen.

12 Q. Okay. In terms of this letter that Jerry
13 Armenta wrote to Jerry Montoya's lawyer, did you
14 have any part whatsoever in helping Armenta come up
15 with the story to exonerate Montoya?

16 A. No.

17 Q. And you laughed; right? You're saying
18 that's an absurd proposition?

19 A. I had no contact with Armenta at that
20 time.

21 Q. Well, you've never seen the letter, so you
22 don't know the date of it; right?

23 A. I don't know the date of it.

24 Q. So you wouldn't know whether you had
25 contact with him at the time or not?

1 A. I do know.

2 Q. How are you saying you know?

3 A. Because I got his -- when I got my
4 discovery, I seen that he had charges contributing
5 to the delinquency of a minor. I had my people look
6 them up, and they were charges that I didn't agree
7 with, and I discontinued all communication with him,
8 as well as the statement he made in the discovery to
9 the state case that he was by the door when Javier
10 Molina was beat up. And I took that as he was
11 snitching, and I didn't want nothing to do with him.

12 Q. So at some point -- at first, you and
13 Armenta and Montoya were fighting or presenting a
14 unified defense in state court.

15 A. No.

16 Q. You never were?

17 A. I was never a part of that. There was
18 three people involved, but I wasn't the third one.

19 Q. At some point you're saying that you cut
20 off any sort of relationship with Jerry Montoya?

21 A. Yes, ma'am.

22 Q. Because he had a sex offense in his past?

23 A. Not just because of that, but -- I found
24 that out later.

25 Q. And is there a date or is there some event

1 that we can tie that to?

2 A. I think it would be around the time. See,
3 I was isolated from the SNM for a long time. When
4 they moved me back, they didn't move me back with
5 the SNM. They moved Jerry Montoya, Timothy Martinez
6 and Armenta from Southern to the PNM North facility.
7 Armenta was put in R pod. Timothy Martinez and
8 Jerry Montoya were put in Q pod. At that time they
9 were isolating the pods. We couldn't go to yard
10 together. We had to go to single --

11 Q. Let me just stop you. If you looked at
12 your physical location history, could that help you
13 tell me the date that you cut off relationship with
14 Mr. Montoya?

15 A. No. I'm telling you right now when they
16 moved him there, I had no communication with him.

17 Q. So my question is -- I don't need to know
18 the whole narrative. I'm just looking for a time
19 period.

20 A. When they moved him that day, you could
21 look at his location when he was transferred from
22 his departure and arrival date from Southern
23 Correctional Facility to PNM North facility, you'll
24 find the date.

25 Q. And that was the last time you're saying

1 you ever communicated with Montoya?

2 A. Yeah. With Montoya, he lived with me at
3 that point in time, yes.

4 Q. What about Armenta?

5 A. I never lived with him.

6 Q. But you communicated with him at times and
7 you saw him in court; right?

8 A. No.

9 Q. Is there a time that you cut off
10 communications with Armenta?

11 A. Around the time I received the discovery.

12 Q. In the state case?

13 A. State case.

14 Q. So if we've got the timeline right, you
15 were charged in the state case sometime in March of
16 2014?

17 A. Right.

18 Q. And so you would have received the
19 discovery within a few weeks of that?

20 A. No, we didn't receive it right away. It
21 took a little while.

22 Q. So a few months after March 2014 is when
23 you cut off your -- any communication with Armenta?

24 A. Not just for that reason. That time was
25 because I was isolated from all SNM members.

1 Q. Okay.

2 A. But yes.

3 Q. So would it be fair to say by June of
4 2014?

5 A. I think would it be fair to say that when
6 we were in Dona Ana County Detention Center, I think
7 that's when I received the full discovery and he was
8 there. And I walked by him after I read it, and I
9 didn't say nothing to him. And that was the last
10 time.

11 Q. Okay. So that would have been sometime in
12 the summer of 2014.

13 A. I do not know.

14 Q. And I don't have Dona Ana County detention
15 records right now.

16 A. Okay.

17 Q. We'll leave it at that.

18 A. You can find them. I'm sure you'll go
19 look for them.

20 Q. So I want to talk to you a little bit
21 about your testimony yesterday regarding your -- the
22 case that sent you to prison.

23 A. Right.

24 Q. And that's the case where you were accused
25 of criminal sexual penetration.

1 A. Two counts.

2 Q. And just to sort of orient ourselves, that
3 crime -- or those crimes occurred in the Grants
4 County jail?

5 A. Grant County Detention Center in Silver
6 City, New Mexico.

7 Q. Okay. Grant County Detention Center.

8 A. In the top tank.

9 Q. So that's a local detention center where
10 people that get arrested for state offenses in Grant
11 County go if they can't make bail?

12 A. Yes, ma'am.

13 Q. And so that would include people that have
14 done things like driving under the influence of
15 alcohol?

16 A. Correct.

17 Q. Domestic violence?

18 A. Any crime on the streets.

19 Q. Minor theft?

20 A. Yes, ma'am.

21 Q. All the way up to more violent crimes?

22 A. Yes, ma'am.

23 Q. And the individual that was assaulted in
24 that case -- was that individual a white male?

25 A. He was a white male, yes.

1 Q. And he was in the county jail -- he was in
2 the county jail pending some sort of criminal case?

3 A. I don't know.

4 Q. Okay. You don't know what kind of case he
5 was pending?

6 A. I don't know what he was pending, no.

7 Q. He was just a white guy that unfortunately
8 ended up in the Grant County jail?

9 A. That's correct.

10 Q. And was he selected -- I mean, I think
11 you've said in your testimony that ultimately you
12 tortured him; right?

13 A. Ultimately, yes.

14 Q. Okay. Was he selected as a target for
15 your torture because he was alone in the county jail
16 without anybody to back him up?

17 A. No.

18 Q. Why was he selected?

19 A. It was an incident where the top tank was
20 just a bunch of unruly youngsters who were causing a
21 lot of problems. And we didn't want him there. We
22 were going to make them leave.

23 Q. He didn't fit in with you guys.

24 A. He didn't fit in with the crowd there.

25 Q. So the idea was to work him over for

1 whatever money and commissary he had; right?

2 A. No, the idea was to make him leave. And
3 while a couple inmates were packing his stuff, they
4 found a receipt that he had money. Then that's when
5 he was kept in the top tank.

6 Q. So you were going to just make him leave,
7 but when you found out there was something you could
8 get out of him, the plan changed?

9 A. That's correct.

10 Q. And the plan became: Let's work him for
11 whatever we can get out of him.

12 A. Me and a couple other individuals, yes.

13 Q. And then let's really humiliate this guy
14 and then we'll get rid of him.

15 A. That wasn't the plan at first. It just
16 proceeded into that.

17 Q. Well, that's what happened; right?

18 A. That's what happened, yes, ma'am.

19 Q. And the torture of this young man happened
20 over a period of weeks, did it not?

21 A. I think it was a week and a half.

22 Q. And the crimes that you committed over
23 that week and a half, when they were ultimately
24 brought to the attention of law enforcement and the
25 prosecution, you were facing a potential sentence of

1 52 years in state prison, weren't you?

2 A. I think it was a total of 159 in the
3 original indictment, before they dropped counts.

4 Q. And then it became 52?

5 A. It became 59, along with the rest of the
6 cases I was facing. I think I had six other cases.

7 Q. Well, that actually reminds me of
8 something I meant to ask you about. You had picked
9 up two cases on the streets of Silver City; right?

10 A. I think it was. Yes, I did.

11 Q. You picked up -- I want to say it was a
12 residential burglary?

13 A. Yes, ma'am.

14 Q. And then you picked up an assault; you
15 stabbed some guy; right?

16 A. Aggravated battery with a deadly weapon.

17 Q. And did you bail out?

18 A. No, I was -- I went to Chihuahua, Mexico,
19 and then was coming across the border, and was
20 extradited from El Paso County to Silver City, and
21 never bonded out.

22 Q. So you first tried to flee.

23 A. Yes. I thought I was going to die, yes.
24 I attempted to flee.

25 Q. So you fled to Mexico to avoid whatever

1 consequences were going to come to you as a result
2 of your criminal activity.

3 A. That's correct.

4 Q. And you got caught?

5 A. I didn't know that he had notified law
6 enforcement. And I had a preliminary hearing on the
7 burglary and larceny. So I was coming back to go to
8 that, and he ended up making a statement, and there
9 was an NCIC nationwide warrant for my arrest.

10 Q. So you got caught?

11 A. I got caught, yes, ma'am.

12 Q. And then you got sent back to New Mexico
13 to face the consequences of those charges?

14 A. That's correct.

15 Q. And was there something you did at that
16 point that -- you were stuck in jail; right?

17 A. Right.

18 Q. Was there something you did at that point
19 to try to get out of the consequences of the
20 charges?

21 A. I was on a work detail with officers from
22 the Los Lunas Cert team and I fled. I walked away.

23 Q. From a work detail while you were pending
24 charges?

25 A. From a work detail pending charges on

1 aggravated battery and a burglary and larceny.

2 Q. And then did you get arrested from that?

3 A. I got arrested immediately after that.

4 Q. And did you end up back in the county
5 jail?

6 A. Something my lawyer told me was idiotic,
7 yes.

8 Q. Then did you come up with a new plan of
9 how to avoid the consequences of your charges?

10 A. After the Hardy case, yes. After the John
11 Hardy case, yes.

12 Q. And what was that?

13 A. To escape again.

14 Q. And how did you -- did you accomplish that
15 escape?

16 A. They caught me right away.

17 Q. But you tried?

18 A. Yes, ma'am.

19 Q. And where did you escape from that time?

20 A. From the hospital.

21 Q. How did you end up in the hospital from
22 the county jail?

23 A. I told the officers I swallowed a razor
24 blade. And I swallowed a little piece of metal that
25 was wrapped around the broom. So when they go to

1 the X-ray machine, they would see there was a piece
2 of metal and believe it was a razor.

3 Q. And they would also believe maybe you were
4 trying to injure yourself?

5 A. No. I told them I swallowed it
6 accidentally; I carried a razor blade in my mouth
7 and I swallowed it accidentally. They housed me,
8 because they thought it was a razor blade. And
9 after taking a shower, the officer didn't put the
10 shackles on me right away. I looked around the
11 corner, seen the officer watching TV, and I ran out
12 of the hospital.

13 Q. But I missed the part where you swallowed
14 the metal and it showed up. And so did they move
15 you from the county jail to the hospital?

16 A. That's correct.

17 Q. To get rid of the metal somehow?

18 A. Correct.

19 Q. And then you took advantage of being in
20 the hospital, where there is lesser security, to try
21 to flee?

22 A. Yes.

23 Q. Again?

24 A. Yes, ma'am.

25 Q. And when you swallowed the metal and

1 presented this situation for the correctional
2 officers at the Grant County jail, did you do that
3 for the purpose of getting transferred to the
4 hospital?

5 A. Yes, ma'am.

6 Q. So you would have a better chance of
7 escape?

8 A. That was the plan.

9 Q. Now, you testified yesterday -- or you
10 acted like yesterday on the stand that you didn't
11 know that the crimes that you were convicted of
12 would require you to register as a sex offender. Do
13 you recall that testimony?

14 A. Right.

15 Q. All right. Was that the truth or a lie?

16 A. I think it's the truth in a way that
17 that's my mindset as it is.

18 Q. Well, you don't want to have to register
19 as a sex offender; right?

20 A. If I have to, if I'm going to become a
21 part of society again and society says that's one of
22 my obligations to do, then I'm going to have to do
23 it.

24 Q. The question is: You don't want to do it?

25 A. No. I'm not a sex offender.

1 Q. And you don't consider yourself a sex
2 offender?

3 A. Neither does the prison world.

4 Q. Let's take a minute and just talk about
5 that. Okay?

6 A. Okay.

7 Q. So the incident that you ended up as a
8 convicted sex offender for -- was this incident in
9 the Grants County jail?

10 A. Grant County jail.

11 Q. Grant, sorry; right?

12 A. Yes, ma'am.

13 Q. And the individual that was the victim of
14 these offenses was a person by the name of John
15 Hardy?

16 A. Yes, ma'am.

17 Q. Now, when you first started -- I think
18 using your word -- torturing Mr. Hardy, did you
19 start to whip him with a towel any time he wasn't
20 standing the way you wanted him to?

21 A. I believe I whipped him a couple of times,
22 yes, with a sheet.

23 Q. With a sheet, not a towel?

24 A. Yes, ma'am.

25 Q. Did you take a razor blade and put it to

1 his throat?

2 A. Yes, ma'am.

3 Q. Did you tell him if he told anybody at the
4 jail, that if he said anything, he would get hurt?

5 A. Yes. This was about -- this was before
6 the incident occurred.

7 Q. Right.

8 A. We were just telling him, if he told the
9 officers that we were extorting him for his money,
10 that I'd have him killed, yes.

11 Q. Did you tell him that if he was -- that he
12 wasn't to say anything about what was going on and
13 he wasn't to try to go to protective custody?

14 A. Yes. About the money, yes.

15 Q. And did you explain to the guards that
16 Mr. Hardy was your friend and everything was okay?

17 A. I don't think I explained that to them. I
18 just told them, "He's cool. Just leave him in that
19 room."

20 Q. So you attempted to -- if the guards were
21 at all concerned, you attempted to convince them
22 there was nothing be concerned about?

23 A. I didn't attempt. I did.

24 Q. And I think Mr. Villa asked you some
25 questions about this yesterday. What's a California

1 knockout?

2 A. It's when you put your hands on the neck,
3 cutting off the blood circulation to the brain, and
4 they go unconscious.

5 Q. And did you make Mr. Hardy do California
6 knockouts?

7 A. Yes, I participated in a couple of
8 California knockouts on him.

9 Q. Did you make him do it about 15 times
10 between 4:00 in the afternoon and 10:30 at night?

11 A. Not me exactly, but I was involved in a
12 few of those, yes.

13 Q. In some of the 15?

14 A. Yes.

15 Q. Not all of them?

16 A. Yes, ma'am.

17 Q. Did you make him drink a cup of urine?

18 A. No, but I was present when it happened.

19 Q. All this happened in a cell; right?

20 A. Yes. I was a part of the group that made
21 him drink urine, yes.

22 Q. Did you hand Mr. Hardy a piece of paper
23 that contained cleanser and make him inhale it
24 through his nose?

25 A. No.

1 Q. That's a lie?

2 A. Cleanser?

3 Q. Yeah, like Ajax or Comet.

4 A. A paper of cleanser?

5 Q. Yeah.

6 THE COURT: Let's not use the word "lie."

7 That will be for the jury to make that

8 determination. You can ask if it's accurate or

9 inaccurate, but let's leave that for the jury.

10 A. Yes, I made him snort Ajax. I didn't make
11 him sniff -- inhale it like a spray. He snorted
12 Ajax.

13 Q. And that was at your command?

14 A. Yes. One time, yes.

15 Q. And did you cause him to have to squirt
16 the contents of a hot sauce bottle into his rectum?

17 A. No.

18 Q. Did that happen?

19 A. I was told it happened. I was facing the
20 grill outside the cell when it took place. I think
21 it happened, yes.

22 Q. This was one cell; correct?

23 A. Yes, it happened.

24 Q. And that happened --

25 A. I didn't see it, but I know it happened.

1 Q. And it happened during the time period
2 that you told him if he told the guards anything
3 about what was going on in the cell, that he'd be
4 killed?

5 A. That's incorrect.

6 Q. It happened a different time?

7 A. Yes.

8 Q. Did you and others that were with you have
9 Mr. Hardy insert a lotion bottle into his rectum?

10 A. One of the inmates did, yes.

11 Q. While you were present in the cell?

12 A. Yes, I was present in the cell.

13 Q. And did you make him do that at least
14 twice?

15 A. No.

16 Q. Did somebody in the cell make him do it at
17 least twice?

18 A. No.

19 Q. That only happened once?

20 A. Only happened once.

21 Q. Did you participate with other inmates in
22 spreading toothpaste around his rectal area with a
23 spoon and making him eat it?

24 A. No.

25 Q. Did that happen?

1 A. I think it happened before I was present,
2 yes.

3 Q. So your testimony here under oath is that
4 you didn't see that happen, and that you did not
5 participate in it?

6 A. I was told, but I didn't participate in
7 it.

8 Q. Did you spit in his face?

9 A. I do not recall.

10 Q. Did you force him to give you information
11 on where he lived, and what kind of car he drove,
12 and what his children's names were?

13 A. His family information, yes.

14 Q. And did you tell him that if he said
15 anything to anybody, that you knew where he lived
16 and you'd be able to track him down?

17 A. I don't remember that. I told him if he
18 told anyone in PC, then I would send Raymond
19 Randolph to find him.

20 Q. And did you punch and kick him and hit him
21 in the head?

22 A. Throughout the time he was being
23 assaulted, or that day?

24 Q. Throughout the time. This was a week and
25 a half.

1 A. Yes, I assaulted him.

2 Q. This happened over the period of a week
3 and a half.

4 A. Yeah. I think in my habeas corpus, I
5 confessed to everything that I did to Mr. Hardy.
6 The habeas corpus that Mr. Villa has.

7 Q. Well, you filed -- once -- let's go back
8 for a second, okay? Because yesterday you testified
9 that you pled no contest to the case. Do you
10 remember that?

11 A. Yes.

12 Q. In fact, you pled guilty, didn't you?

13 A. No contest.

14 MS. JACKS: Your Honor, I have a certified
15 copy of a repeat offender and disposition agreement
16 in case number 424 CR-2006-00003. I'd ask that that
17 be marked defense next in order. I'm told that's
18 EZ.

19 THE COURT: Any objection, Ms. Armijo?

20 MS. ARMIJO: I haven't seen it.

21 MR. CASTELLANO: Can we approach, Your
22 Honor?

23 THE COURT: You may.

24 (The following proceedings were held at
25 the bench.)

1 MR. CASTELLANO: If this is what I think
2 it is, this is used for the purposes of habitual
3 offender enhancements. So if you admit, it means
4 you were convicted of a crime for purposes of the
5 New Mexico Habitual Offender Statute. What we need
6 to look at is the actual judgment itself to see what
7 the crime was.

8 MS. JACKS: I think the judgment was
9 entered -- marked and entered by Mr. Villa as an
10 exhibit.

11 MR. CASTELLANO: It's in the pen pack in
12 evidence, if we can look at that.

13 MS. JACKS: I'm not proposing to admit.
14 I'm just using it to refresh his recollection.

15 MR. CASTELLANO: This document won't
16 refresh his recollection. This is used for the
17 purpose of admitting that you have a conviction for
18 the offense -- the underlying offense is what -- the
19 action being looked at.

20 THE COURT: Well, if she wants to try to
21 refresh his memory with this, I'll allow it.
22 Doesn't look like it's coming in. And if you want
23 to try to do something later, you can do it on
24 redirect.

25 MR. CASTELLANO: I'm worried about leaving

1 a false impression with the jury. That's not the
2 purpose of this document.

3 MS. JACKS: It looks like -- let me take a
4 look.

5 THE COURT: She can refresh him with what
6 she wants. If it doesn't work, you can do it on
7 redirect.

8 MR. CASTELLANO: Give me a moment. While
9 we're up here, Your Honor, that's not the correct
10 document. That's all I'm saying. She's trying to
11 refresh or impeach with the wrong document.

12 THE COURT: I don't think she's impeaching
13 yet. She's just trying to refresh.

14 MS. JACKS: Is there another document that
15 I need?

16 MR. CASTELLANO: The correct document is
17 the plea paperwork with the judgment.

18 MR. JEWKES: This particular document,
19 Your Honor, outlines three counts in a criminal
20 information, and that the defendant shall admit one
21 prior felony conviction, second-degree kidnapping
22 with an indictment number for the kidnapping.

23 MR. CASTELLANO: I agree.

24 MR. JEWKES: And dispositions.

25 MR. CASTELLANO: I agree. If it's a no

1 contest plea or a guilty plea means a felony
2 conviction. But this is pursuant to the New Mexico
3 statute for enhancing sentences.

4 MS. JACKS: I have the plea agreement.

5 MR. CASTELLANO: That is the proper
6 document.

7 MS. JACKS: I'll take a look it.

8 (The following proceedings were held in
9 open court.)

10 THE COURT: All right. Ms. Jacks.

11 MS. JACKS: Your Honor, as I indicated at
12 the bench, I'm going to withdraw this and proceed
13 down a different line of questioning for the time
14 being.

15 THE COURT: All right.

16 BY MS. JACKS:

17 Q. So Mr. Rodriguez, in connection with your
18 conviction on this criminal sexual penetration case,
19 you decided, after you got to prison -- you started
20 having second thoughts about entering into the plea;
21 right?

22 A. Yes. In early 2008 I became aware of
23 learning more about the law.

24 Q. And in -- well, actually, it was before
25 that that you started having second thoughts, wasn't

1 it? Because you filed a series of petitions for
2 habeas corpus.

3 A. I think the beginning one was 2007, 2008.
4 The first one?

5 Q. Let's focus on the question, and then
6 we'll get to where we're going. Okay?

7 A. Okay.

8 Q. So did you file a series of petitions for
9 writs of habeas corpus?

10 A. Yes, ma'am.

11 Q. And that's a petition with the Court where
12 you're basically saying you're being held illegally
13 and you want to be released?

14 A. No, not released.

15 Q. You want to get a new trial?

16 A. I want my plea deal reversed.

17 Q. You want your plea deal reversed?

18 A. Right.

19 Q. And did you file a first petition for writ
20 of habeas corpus on August 10th, 2007?

21 A. If that's first one, yes.

22 Q. Okay.

23 MS. JACKS: Your Honor, I have a copy and
24 I'd like to mark that defense next in order. And
25 again, I'm proposing to show this to the witness;

1 not necessarily to admit it as evidence.

2 THE COURT: If you're withdrawing EZ, do
3 you want to use EZ?

4 MS. JACKS: Why don't I? I'll just move
5 the sticker over.

6 May I approach the witness?

7 THE COURT: You may.

8 BY MS. JACKS:

9 Q. Mr. Rodriguez, I'm going to leave this up
10 here with you, because I have another copy for
11 myself.

12 A. I know this is my first one.

13 Q. That's what I wanted to ask. So that is
14 your first petition for writ of habeas corpus?

15 A. Yes, ma'am.

16 Q. And you filed that with the Court on
17 August 10th, 2007?

18 A. Where is that?

19 Q. On the file stamp on the first page in the
20 upper right-hand corner.

21 A. Yes, 8/10/2007.

22 Q. At the time, you were an inmate in the New
23 Mexico Department of Corrections?

24 A. Yes, ma'am.

25 Q. And you were representing yourself?

1 A. Yes, ma'am.

2 Q. Now, was this -- in filing this, did you
3 have to attest to the truthfulness of this document?

4 A. I did.

5 Q. And it was under the same oath, an oath
6 similar to the oath that you took in court yesterday
7 and again today?

8 A. I don't know. I wasn't sworn in.

9 Q. But did you swear that the document was
10 true under penalty of perjury?

11 A. I believe I wrote that.

12 Q. I just want to direct you -- I want to
13 discuss a particular paragraph with you.

14 A. Okay.

15 Q. And on mine, that is what's labeled page 3
16 of this petition of habeas corpus, where you're
17 outlining the reasons that you're being -- that your
18 case should be overturned or reversed; right?

19 A. Yes.

20 Q. Or your plea deal should be overturned?

21 A. That's correct.

22 Q. And one of the things that you were
23 claiming was that you got ineffective assistance
24 from your lawyer.

25 A. That's correct.

1 Q. And that he should never have encouraged
2 you to plead guilty to the 18 years?

3 A. That he promised me promises, yes.

4 Q. And that he had made a promise to get you
5 married, which he failed to follow through with.

6 A. That's correct.

7 Q. Directing you specifically to page 3, the
8 part of the complaint that's labeled paragraph C,
9 did you also tell the Court that your conviction
10 should be vacated, because -- I'm just going to
11 quote from paragraph C?

12 A. Okay.

13 Q. -- "they also failed to inform petitioner
14 of all the consequences of a plea to a sexual
15 offense, as in having to register as a sexual
16 offender upon his release according to SORNA, Sexual
17 Offender Registration and Notification Act,
18 29-11A-7. Petitioner's attorney had an affirmative
19 duty to provide him specific advice regarding the
20 impact a no-contest plea would have on his life."

21 A. That's correct.

22 Q. That was part of your complaint?

23 A. That was part of my complaint.

24 Q. So as of the date that you filed this
25 petition for writ of habeas corpus, August 10th,

1 2007, you were aware that your conviction would
2 require you to register as a sex offender upon your
3 release from custody.

4 A. I wasn't completely aware, because my J&S
5 didn't say that, so I was kind of lost on that
6 aspect of it.

7 Q. You would agree with me that this petition
8 for habeas corpus, page 3, you're citing the fact
9 that you have to register as a reason your
10 conviction should be vacated.

11 A. Under SORNA, yes.

12 Q. And since this initial petition for writ
13 of habeas corpus, did you file an amended petition
14 for writ of habeas corpus through a lawyer in
15 September of 2007?

16 A. On this habeas?

17 Q. On this particular one, yes.

18 A. I believe there was one.

19 Q. And that was making the same sorts of
20 arguments to the Court?

21 A. That's correct.

22 Q. And finally -- I think you were asked
23 about this one yesterday -- on May 2 of 2013, did
24 you again, representing yourself, file yet a third
25 petition for writ of habeas corpus, making some of

1 the same complaints, trying to get rid of your
2 conviction for this registerable sex offense?

3 A. That's correct.

4 Q. So since 2007, so for a period of over 10
5 years, you've been trying to do whatever you can to
6 get rid of this conviction for this sex offense?

7 A. Not trying to get rid of it; get my case
8 overturned and admit to the crimes that I did
9 commit.

10 Q. And not have to register as a sex
11 offender.

12 A. That was part of it, yes.

13 Q. Would you agree with me that the fact that
14 you were convicted of these sex offenses is
15 something that has bothered you greatly ever since?

16 A. Well, yes.

17 Q. And we talked a little bit about your
18 creative writing. Does that sex offense figure into
19 some of your creative writing?

20 A. There is, I think, an essay I wrote on how
21 this life can lead you down a road like that when
22 you never expected it. And I think I wrote it to
23 probation officers.

24 Q. And some of your writing has been to try
25 to -- I guess I would characterize it as process

1 your feelings and some of your anger about being
2 convicted of this offense?

3 A. I was getting not just -- no. It was not
4 processed feelings. I know my feelings behind it.
5 It was outlining my life, and to further get to know
6 myself. I wrote for myself; and other people seemed
7 to like it, and I got into that aspect of it.

8 MS. JACKS: So, Your Honor, I have a
9 document entitled "An essay by Mario Rodriguez,
10 Inmate, Level 6." It has a Bates stamp of 51999.
11 And I'd like to mark this as next in order. And
12 again, this is for asking the witness questions.
13 I'm not proposing to admit it. I'm told that's FA.

14 THE COURT: All right. The document will
15 be so marked.

16 MS. JACKS: May I approach?

17 THE COURT: You may.

18 A. Can I keep this one, as well?

19 BY MS. JACKS:

20 Q. Yes, I'm going to take this one back. And
21 Mr. Rodriguez, I'm going to let you take a look at
22 that and just tell me -- take your time. Take a
23 look at it and tell me if you recognize that
24 document.

25 A. Yes.

1 Q. Is that something that you wrote?

2 A. Yes.

3 Q. And I just want to ask you -- I marked a
4 few places on this document so I don't have to keep
5 running up there to talk to you. But I want to ask
6 you a couple of questions about this document.

7 First of all, do you believe that your sex offense
8 crimes are normal?

9 A. In this world, yes.

10 Q. And do you believe that your sex offense
11 crimes never harmed an innocent person?

12 A. Being that it was incarcerated, and
13 incarcerated individuals that are in the lifestyle,
14 yes, it wasn't against an innocent individual.

15 Q. In this essay -- and I'm going to direct
16 your attention to the marked language at the top of
17 page 51999 -- can you tell me what you wrote with
18 that topic?

19 A. Do you want me to read it?

20 Q. Yes.

21 A. "I believe in my heart of hearts that all
22 my crimes are normal, because I've never harmed an
23 innocent person." Do you want me to continue?

24 Q. No. I think you've answered my question.
25 Do you believe that the crimes that you committed,

1 the sex offenses that you committed, were against
2 individuals who lived the same lifestyle as you, so
3 they aren't to be deemed innocent?

4 A. That was incarcerated with me, yes.

5 Q. And is that a topic that you wrote on in
6 this essay?

7 A. I haven't seen this essay in a very long
8 time, but --

9 Q. I would direct your attention to the
10 second marked language on page 51999.

11 A. Do you want me to read it?

12 Q. Yes.

13 A. "My crimes have been against individuals
14 who live the same lifestyle, so therefore, they
15 cannot be deemed innocent."

16 I don't think that's what I wrote there.
17 This is -- oh, yes, that's okay. I understand it
18 now.

19 Q. That is something that you wrote.

20 A. That's what I wrote. This is retyped by
21 my teacher.

22 Q. Right. Because he was impressed with your
23 work, and as a favor to you, he actually offered to
24 type it up; right?

25 A. No.

1 Q. He just did it on his own?

2 A. Yes. He's putting together a book of the
3 relationship he and I built over the time he spent
4 in the Penitentiary of New Mexico.

5 Q. Did you enter a plea deal in your criminal
6 sexual penetration case, not because you were
7 guilty, but because you thought your peers would
8 think you were crazy, and that prison would give you
9 a more solid and respected image?

10 A. Do you want me to read it?

11 Q. I want you to answer the question first.
12 Then I'll let you read it.

13 A. At that time, I was 18. I was straight
14 out of the juvie system. And I felt that the more
15 time you get, the more people look at you like
16 you're a crazy guy. You say, "Oh, I'm doing 30
17 years," people instantly respect that.

18 Q. So my question was --

19 A. Yes.

20 Q. My question was: Did you enter the plea
21 not because you were guilty or committed the crimes,
22 but to make your peers think you were crazy and to
23 improve your image of respect?

24 A. Correct.

25 Q. And did you write about that in this

1 essay?

2 A. Yes, you just read it.

3 Q. Will you read it? And for the record, let
4 me just put where you're reading from. This is that
5 same exhibit, at page 52001 in the first paragraph,
6 some highlighted text.

7 A. Are you ready?

8 Q. Yes.

9 A. You want me to do it from, "The next thing
10 you know," or --

11 Q. Yeah, I think so.

12 A. "The next thing you know, I'm spending 18
13 years in prison; not because I was guilty or that I
14 committed these crimes. I entered a plea because I
15 thought my peers would think I was crazy. And
16 prison made my image more solid and respected."

17 Q. I've got some other ones, and I want to
18 ask you about those just briefly.

19 A. Okay.

20 Q. I have another document. It starts at
21 Bates 52007. It's entitled, "Writings of Mario
22 Rodriguez," and there is a note on the top that they
23 were typed and composed by Keith Mark Johnson. And
24 I'd like that marked defense next in order.

25 THE COURT: Do you want to say that out

1 loud? What's the exhibit number?

2 MS. JACKS: F as in Frank, B as in boy.

3 May I approach the witness?

4 THE COURT: You may.

5 A. Do you want to keep this one? I haven't
6 seen this in a long time.

7 BY MS. JACKS:

8 Q. You can't keep it, unfortunately.

9 A. Can I get a copy of it?

10 Q. Yes. Showing you, Mr. Rodriguez, what's
11 been marked as FB, take your time and look through
12 that and see if that is, in fact, what it purports
13 to be, which are your writings typed up by your
14 teacher.

15 A. I haven't seen this, and I haven't
16 probably read it in years. So I don't know if it's
17 all my writing.

18 Q. But it's quite a few pages?

19 A. It's a lot of pages.

20 Q. Let me direct you to the two things I'm
21 going to ask you about, and see if you can just
22 direct your attention to those. So if you look at
23 page 52018, there is some highlighted -- there is a
24 highlighted portion at the top of the page that
25 starts with "So the lesson seemed to be."

1 A. Okay.

2 Q. Is that something that's from your
3 writings?

4 A. This is an excerpt out of "The Ax Maker's
5 Gift," by a writer named Wright. It's supposed to
6 be in his quotations.

7 Q. Okay. And is this something that you
8 wrote about, discussing it as part of your
9 philosophy?

10 A. No, this was something that I seen how
11 people acted toward other people, and it was
12 relating to the SNM, and how they're willing to
13 exploit you for whatever reason. And I added it
14 to -- you have to read the whole thing to get the
15 gist of it.

16 Q. I think based on your answers, I'm going
17 to move to the next portion I'm going to ask you
18 about. And that's at 52019. And it's the
19 highlighted language on that page. There is a
20 section at the top of the page and a section at the
21 bottom of the page.

22 A. Ready?

23 Q. Have you had a chance to read that?

24 A. Yeah.

25 Q. And do you recognize that as your writing,

1 not just copying somebody else's writing?

2 A. Yes, I believe this is my writing.

3 Q. And is this your writing commenting on
4 your feelings about your conviction for the criminal
5 sexual penetration case? And I'm talking about the
6 two highlighted portions, the one on the top and the
7 one on the bottom.

8 A. On page 52018?

9 Q. 52019, I'm sorry.

10 A. 52019? Which one do you want me to read
11 first?

12 Q. Take a look at both of them. And I'll
13 just ask you both of them at the same time.

14 A. Okay.

15 Q. So my question is: Are those -- do you
16 recognize that as things that you wrote?

17 A. Yes.

18 Q. And do you recognize that as things you
19 wrote about your criminal sexual penetration case?

20 A. That's correct.

21 Q. And so why don't you tell -- let's start
22 with the section at the top of the page. Can you
23 read that highlighted section?

24 A. I think --

25 Q. That starts with "For."

1 A. "For some reason I can't regret my choice,
2 no matter how harshly judged or shamed."

3 Q. And can you read the section at the
4 bottom?

5 A. "The old saying that joked about 'Don't
6 drop the soap' came through, and I stood involved."

7 Q. And finally, Mr. Rodriguez, I'm going to
8 ask you to turn to the very last page. That's
9 52022. And I think this is some writing that you
10 did about relationships, and I want to just ask if
11 you recognize that as your writing, and not somebody
12 else's?

13 A. The last page?

14 Q. It's the very last page. And I just
15 highlighted a portion that I want to ask you about.

16 A. Yes, this was about my son and my baby's
17 mother.

18 Q. And is it also about your -- is it
19 reflecting your views on relationships?

20 A. Yes, but not -- I get what you guys are
21 doing. It's in the aspect of the love I was wanting
22 from them. And do you want me to read it?

23 Q. Can you read what you wrote about the
24 relationship?

25 A. "I don't get anything out of the

1 relationship; therefore, I don't need it."

2 Q. That's all the questions I have about that
3 topic right now, Mr. Rodriguez.

4 So I want to talk to you a little bit
5 about what you're getting out of your relationship
6 with the Government as a Government witness. And I
7 think some other lawyers have asked you some
8 questions about this.

9 But let's start at the beginning. I think
10 you told us that your decision to become a
11 Government witness happened on October 24, 2017.

12 A. That's correct.

13 Q. And in order to get the help that you
14 needed -- I mean, at that point, you became -- you
15 wanted to become a witness and try to get some sort
16 of leniency for the criminal conduct that you were
17 accused of. Is that accurate?

18 A. That's part of cooperating, yes, ma'am.

19 Q. And at the time, this was, just as you
20 pointed out, just a few months ago, there weren't
21 too many -- let me go back a second. In order to
22 get credit for cooperating and for getting the
23 Government recommendation for a more lenient
24 sentence, you have to provide what's called
25 substantial assistance; right?

1 A. What is that?

2 Q. That's what is required for the Government
3 to file what's been referred to here in Court as a
4 5K1 motion?

5 A. Would it be --

6 Q. In other words, where they tell the judge
7 that "Here's how Mr. Rodriguez helped us with our
8 case, and so here's why he should get a more lenient
9 sentence."

10 A. Oh, okay.

11 Q. I'm sure you discussed that with your
12 lawyer.

13 A. No, I don't think we really got that far
14 into it.

15 Q. But you're aware that in order to receive
16 that sort of recommendation, you have to provide
17 substantial assistance?

18 A. I am now, yes, ma'am.

19 Q. And at the time, back in October 24, 2017,
20 there weren't too many people left to provide
21 substantial assistance for, were there?

22 A. As far as who?

23 Q. As far as people left as defendants in the
24 Molina homicide.

25 A. I don't think -- no, there wasn't.

1 Q. And so if you were going to provide
2 substantial assistance in October of 2017, that
3 assistance needed to be directed towards the
4 defendants in this case, didn't it?

5 A. No.

6 Q. You don't think so?

7 A. No.

8 Q. Let's talk about the benefits that you've
9 received.

10 A. Okay.

11 Q. Do you want to list them? Or why don't
12 you just take a shot at listing them, and then if I
13 think you got something, I'll let you know.

14 A. I got a 5K.

15 Q. You're expecting a 5K; right?

16 A. I don't know really how that works. I
17 just know I signed a 5K, a Kastigar letter.

18 Q. You signed a cooperation agreement, and
19 the Government has said that if you testify as a
20 witness and help their case during the trial,
21 they'll make a recommendation for a lesser sentence;
22 right? That's a benefit?

23 A. All right.

24 Q. Right?

25 A. Yeah.

1 Q. That's a benefit. So what besides that?

2 A. I got out of the gang life. I don't have
3 to be a gang member no more.

4 Q. Right.

5 A. My one opportunity to get completely out.
6 I think I got \$50 a month.

7 Q. So you got some money.

8 A. Yeah, if you call that money.

9 Q. It's more money than you got when you were
10 in prison.

11 A. Bullshit. My family take care of me.

12 Q. They can still take care of you, can't
13 they, Mr. Rodriguez?

14 A. And they still do.

15 Q. What about visits?

16 A. About visits, I got I think a threat
17 analysis visit.

18 Q. And you got family visitation; right?

19 A. I got to see my family.

20 Q. And you actually got to do that in a
21 contact setting, not separated by a Plexiglas
22 screen.

23 A. Yes, ma'am. That surely isn't the reason
24 why I left.

25 Q. I'm going to ask you the questions: You

1 got the agreement that whatever is remaining on your
2 state time can run concurrent with whatever federal
3 sentence you get for -- as a result of your
4 cooperation.

5 A. Not at first.

6 Q. But you got that.

7 A. Yes. After I seen the plea agreement, I
8 requested that my state time be run concurrent.

9 Q. So you bargained for that.

10 A. I'm on in-house parole. But I don't know
11 really how much time I've really got left in the
12 state.

13 Q. And have you been promised -- or has
14 anyone discussed with you any sort of cut in your
15 state time or the fact that your state time can be
16 terminated early?

17 A. No.

18 Q. As part of the benefits for becoming a
19 Government witness in this case, have you been
20 promised a new identity, a new identity that comes
21 with a new criminal record that's clean?

22 A. Not that I'm aware of.

23 Q. Have you discussed that with the
24 prosecution?

25 A. No, ma'am.

1 Q. Now, Mr. Rodriguez, on November 9th of
2 2017, prior to the meeting with the FBI and Ronald
3 Sanchez, did you write a letter to Daniel Sanchez?

4 A. I did.

5 MS. JACKS: And Your Honor, I have a copy
6 of that letter. I'd ask that it be marked defense
7 next in order. F as in Frank, C as in cat. And
8 that's Bates No. 51520.

9 May I approach the witness?

10 THE COURT: You may.

11 BY MS. JACKS:

12 Q. Mr. Rodriguez, I'm going to ask you to
13 take a look at that letter and see if that's the
14 letter you wrote to Mr. Sanchez on November 9 of
15 2017?

16 A. This is the letter I wrote to Daniel
17 Sanchez.

18 Q. And you wrote that letter before you had
19 the meeting with the FBI agent and Daniel's brother;
20 right?

21 A. Right.

22 Q. And you wrote it in part, I guess, to
23 explain your decision of why you became a Government
24 witness; right?

25 A. Yes.

1 Q. And I think the other reason or the other
2 part, the other thing you were trying to communicate
3 in this letter was that maybe Dan should follow you
4 and maybe he should become a Government witness?

5 A. Not follow me. I just wanted him to know
6 that there was choice out there he could make. I
7 didn't know there was a choice to be made.

8 Q. And at the time that you wrote this
9 letter, you had been told by the Government that if
10 you get Mr. Sanchez to become a Government witness
11 or plead guilty, that you would get a benefit for
12 that.

13 A. No.

14 Q. You had not been told that?

15 A. No.

16 Q. Did you tell Mr. Sanchez -- and I'll just
17 direct your attention to the very last part of the
18 letter where you put a PS on there.

19 A. Yes, ma'am.

20 Q. And did you tell -- you're discussing with
21 Mr. Sanchez in the letter some of the benefits that
22 could accrue to him if he were to become a
23 Government witness; right?

24 A. That's correct.

25 Q. And did you tell him in the letter that he

1 could get a new identity that comes with a new
2 criminal history record?

3 A. It says, "New identity record means you
4 guys can go hunting again legally. Think of a real
5 life and all its perks and pleasures. Happy
6 birthday."

7 Q. Let me just break that down because you
8 read it pretty fast. The question that was pending
9 was: Did you discuss with him the benefits he could
10 get if he would sign up as a Government witness?

11 A. Yes. If he does his homework, yes, he can
12 get that.

13 Q. If he does his homework?

14 A. That's what I did.

15 Q. And did one of those benefits include a
16 new identity?

17 A. I don't know if it's to the extent that I
18 believe it is, because I had my family Google it and
19 send me articles about procedures of securing WITSEC
20 and interviews from people who were in WITSEC. And
21 I may be not correct about this, but it may be
22 correct; it may not. That's what I got.

23 Q. But it was your state of mind, at least,
24 when you wrote this letter?

25 A. That I hope for that.

1 Q. That by becoming a Government witness, you
2 have the chance at getting a new identity; right?

3 A. That's correct.

4 Q. That comes with a clean criminal record?

5 A. I don't know if they clean your record.
6 That's what I said, yes.

7 Q. But that was your state of mind; you
8 thought that was true?

9 A. Yes.

10 Q. And in fact, in this letter what you
11 communicated to Mr. Sanchez -- you know that when he
12 was a young kid, that Daniel liked to go hunting
13 with his family?

14 A. Yes. I know Dan very well, yes.

15 Q. And he speaks fondly of that, that time?

16 A. Yes, ma'am.

17 Q. And you knew that what you're
18 communicating to him in this PS is that if he gets a
19 new identity and a clean criminal record, that means
20 that he can go and do something that he really
21 enjoyed, which was hunting, and he can do that
22 legally?

23 A. When I brought this up to -- when Acee
24 read this, he told me, "Well, with a bow and arrow."

25 So I assume they're not cleaning the

1 record.

2 Q. But you wrote this.

3 A. Yes.

4 Q. And then later, you spoke to Acee about it
5 and he told you you're wrong?

6 A. When I gave him the letter, yes.

7 Q. And so when you wrote this letter, it was
8 your state of mind that by becoming a Government
9 witness, you certainly had a chance of getting a new
10 identity with a new criminal record?

11 A. Yes.

12 Q. And for you, that would mean a new
13 identity as a person that doesn't have to register
14 as a sex offender?

15 A. I wouldn't have to register if I would
16 have went to trial either.

17 MS. JACKS: Objection, Your Honor. That's
18 not responsive to the question.

19 THE COURT: We'll strike the answer.

20 MS. JACKS: Please.

21 BY MS. JACKS:

22 Q. Mr. Rodriguez, can you answer the
23 question?

24 A. Can you ask it again?

25 Q. Yeah. The question was: In your case,

1 what your thought was, that you would get a new
2 identity that came with a clean criminal record.

3 A. That's correct.

4 Q. And that you wouldn't have to register as
5 a sex offender?

6 A. Who knows? I might. I don't know.
7 That's my mentality at the time, yes.

8 Q. That was certainly your mentality.

9 A. Yes, ma'am.

10 Q. And this letter was written November 9 of
11 2017; right?

12 A. If that's the date on the letter, yes.

13 Q. A couple of weeks after you made your deal
14 with the Government to become their witness?

15 A. Yes, ma'am.

16 MS. JACKS: I have nothing further.

17 THE COURT: Thank you, Ms. Jacks.

18 Ms. Armijo, do you have redirect of Mr.
19 Rodriguez?

20 REDIRECT EXAMINATION

21 BY MS. ARMIJO:

22 Q. Mr. Rodriguez, I'm going to first start
23 actually with -- I have a copy here of Defendants'
24 Exhibit EY, which, as you can see on the Elmo, is
25 the exhibit that Ms. Jacks wrote on when she was

1 talking to you about a timeline. Does that appear
2 to be a copy of it?

3 A. Yes, ma'am.

4 Q. And I recall at one point even, you were
5 talking about -- I'm looking here at March 2 through
6 the 3rd, specifically you were trying to remember a
7 point in time and put the references, and you said,
8 "Yes, after I -- after Dan and I read it, I sent it
9 back under the door." Do you recall that?

10 A. Yes.

11 Q. Okay. But she didn't put that there, did
12 she?

13 A. No, she did not.

14 Q. So what I'm going to do is: I'm going to
15 go through -- because I think -- and maybe add some
16 things to this. Now, you indicated on March 6,
17 2014, Number 1, Mr. Urquizo arrives at the unit, and
18 then you said, "Mario Rodriguez slides a note under
19 the door to Lupe Urquizo."

20 A. Right.

21 Q. Was anybody with you at that time?

22 A. Timothy Martinez.

23 Q. And that's the incident, so I'm going to
24 write --

25 THE COURT: Hold on just a second. I

1 think probably the way we ought to do this is, why
2 don't you make a copy of that?

3 MS. ARMIJO: This is not the original.

4 MS. JACKS: It's a copy. So I have no
5 objection.

6 THE COURT: Do you want to mark it as a
7 Government's Exhibit?

8 MS. ARMIJO: I'll mark it later, Your
9 Honor. This is a copy. I believe the original is
10 yellow and up there.

11 MR. VILLA: Your Honor, I didn't realize
12 it was a copy.

13 MS. ARMIJO: Sorry if I didn't make that
14 clear. This is not yellow. In fact, I'm going to
15 put over here -- but that is different copy.

16 BY MS. ARMIJO:

17 Q. Okay. So Number 1, Urquizo arrives at
18 unit 1-A and you slide a note, and I believe you
19 testified yesterday that Timothy Martinez was with
20 you.

21 A. Yes, ma'am.

22 Q. And that's when you kind of were
23 introducing him to him?

24 A. Introducing him to him and asking him if
25 he had the syringe.

1 Q. So I'm going to add "TR with MR."

2 And then the next thing you have under
3 there is that LU, Lupe Urquizo, passes a note to
4 you, and it says here, "by a third party under the
5 same door as door number 2."

6 Now, who was that third party?

7 A. Carlos Herrera.

8 Q. And how do you know that?

9 A. Well, I know his voice. I know I called
10 him to the door.

11 Q. You called for Carlos Herrera?

12 A. I called Lazy.

13 Q. Lazy?

14 A. Yes, ma'am.

15 Q. His nickname?

16 A. Yes, ma'am.

17 I think when you put TR, it's TM.

18 Q. Thank you.

19 Okay. So this third party is actually
20 Carlos Herrera? We'll put CH for him.

21 MS. JACKS: Your Honor, I believe that
22 misstates the testimony. I think he was guessing as
23 to whether it was Mr. Herrera. So we put third
24 party to indicate he was unsure.

25 THE WITNESS: I'm pretty sure it was

1 Carlos Herrera.

2 THE COURT: Let me do this: I'll let you
3 go back on recross. But let me have Ms. Armijo go
4 through her chart with the witness.

5 MS. JACKS: That's fine. Can we have it
6 numbered?

7 MS. ARMIJO: What is our next number?
8 755.

9 MS. JACKS: Thank you.

10 BY MS. ARMIJO:

11 Q. Now --

12 A. I think one of these instances was Carlos
13 Herrera. I'm not sure if it was the circled three
14 or four, but I know one of them was him.

15 Q. Okay. So Lupe Urquizo passes a note to
16 you by this person under the same note, and then
17 Number 4, just so that we're clear, Mario Rodriguez
18 slides a second note under the same door to Lupe
19 Urquizo by third party.

20 A. That's correct.

21 Q. Okay. So one of these, Lupe is passing
22 you a note through somebody; and then in number 4,
23 you're passing a note back to Lupe through somebody;
24 is that correct?

25 A. That's correct.

1 Q. Okay. Now -- and you say third party.
2 Now, which one did you call Lazy out to, if you
3 recall?

4 A. The only person I went through in that pod
5 was Carlos Herrera, so I think I was calling for him
6 on one of them, and he wasn't near the door. So I
7 just slid it, told him to give it to Lupe. I don't
8 know which one it was.

9 Q. The other incident, what happened?

10 A. I responded to the letter that I got from
11 Urquizo and slid it back to him, the response.

12 Q. Okay. So you call out for Lazy here. Is
13 that what you're saying?

14 A. I called out for Lazy both times. But I
15 only got him on one time.

16 Q. Okay. You called out for him on 3 and 4?

17 MS. BHALLA: Your Honor, I have an
18 objection. I think the witness testified he doesn't
19 know which time he gave it to Carlos and which time
20 he didn't. I think that that is misleading. If
21 he's not clear which one it was, we should leave it
22 as third party.

23 THE COURT: I'll let Ms. Armijo put her
24 chart together and he can testify. And you can work
25 on it on recross.

1 BY MS. ARMIJO:

2 Q. So you're not sure which time. So I want
3 to be sure. Did you call for Carlos Herrera each
4 time?

5 A. Yes.

6 Q. And so you did on the other time, as well,
7 number 4?

8 A. Yes, ma'am.

9 Q. All right. Does that accurately reflect
10 each of those incidents?

11 A. Yes.

12 Q. And on one of these incidents did he
13 actually -- "he" being Carlos Herrera -- ever speak
14 back to you?

15 A. I just told him to give this to Lupe, and
16 he said, "All right." That was it.

17 Q. And which time did he say "All right"?

18 A. I can't recall.

19 Q. Okay. One of those times he said "All
20 right"?

21 A. Yes, ma'am.

22 Q. Okay. And so we'll just leave it like
23 that. But one of these times is "All right."

24 Now, for number 3 and, 4 was anybody with
25 you when you did those?

1 A. No.

2 Q. Okay. Then we're going to go to March.
3 Now, was there anything else of significance for
4 March 6 of 2014 regarding the Molina murder? Did
5 you have any conversations with anybody that's not
6 reflected here on Friday, the day that Mr. Urquizo
7 came?

8 A. I think the only thing that's missing here
9 is when we observed the CO writing the names of the
10 new arrivals on the chalk board, on the white board
11 in the bubble. That's only thing that's missing.

12 Q. Okay. And who is "we"?

13 A. Myself and the rest of the inmates in blue
14 pod.

15 Q. So that's when you're talking about you
16 knew the train was coming?

17 A. Yes, ma'am.

18 Q. So I'm going to say up here before this,
19 "observed board." How's that?

20 A. The white board. We go to the top tier,
21 and you can see what's going on in the bubble in the
22 control center.

23 Q. Okay. Now you said "with other members of
24 the pod." Do you recall specifically anybody with
25 you?

1 A. I think the only members that were there
2 were myself, Daniel Sanchez, Jerry Montoya, Javier
3 Molina.

4 Q. Jerry Montoya?

5 A. Yes, ma'am.

6 Q. Okay. And who else? I wrote Jerry
7 Montoya.

8 A. Oh, Jerry Armenta. I don't think Ronald
9 Sanchez was paying attention to it. Javier Molina,
10 Dan Sanchez.

11 Q. Javier Molina was there, as well?

12 A. Yes.

13 Q. That's the same initials. I'm going to
14 write "Javier" for him, as Jerry Montoya.

15 A. And myself. Rudy Perez was in his cell;
16 he wasn't out for that. I think that's all that was
17 there that didn't work in the pod for the wheelchair
18 program.

19 Q. Now, we're going to March 7, and I believe
20 the first thing that we have here is "Went to yard
21 and on the way talked through yellow pod main door."
22 Okay. And what happened during this incident?

23 A. I spoke to Carlos Herrera --

24 Q. Okay.

25 A. -- about asking Lupe if he got that.

1 Q. What did you speak to him about?

2 A. Asked him if Lupe had had that, if he got
3 that -- the paperwork. He thought I was asking
4 about the syringe. I told him no.

5 Q. Did you clear that up?

6 A. I told him, "No, the paperwork."

7 He didn't know what I was talking about,
8 so he talked to Lupe Urquizo and came back and told
9 me, yes, he had it.

10 Q. So you asked Carlos Herrera about it.

11 A. I did.

12 Q. And Carlos Herrera came back and told you
13 that he had it?

14 A. He went and talked to Lupe Urquizo and
15 told me that Lupe Urquizo had it.

16 Q. And was anybody else with you at this time
17 involved in this?

18 A. All blue pod, but I was the only one
19 speaking to Carlos Herrera.

20 Q. Was anybody -- did you talk to anybody
21 about what you were doing?

22 A. Not until --

23 Q. Did you say, "Hey, this is what I'm
24 doing," anything like that?

25 A. No.

1 Q. Okay. Then after lunch you got the
2 paperwork from under the emergency door; is that
3 correct?

4 A. That's correct.

5 Q. Who did you get the paperwork from?

6 A. I think on Number 1 right there --

7 Q. Okay.

8 A. -- when we went to the yard, I had spoke
9 to Daniel Sanchez about the paperwork being there.

10 THE COURT: Ms. Armijo, would this be a
11 good time for us to take our lunch break?

12 MS. ARMIJO: Yes, Your Honor.

13 THE COURT: All right. We'll be in recess
14 for about an hour. All rise.

15 (The jury left the courtroom.)

16 MS. ARMIJO: Your Honor, we have a brief
17 security issue to discuss with you.

18 THE COURT: Okay.

19 MS. ARMIJO: I don't think we need to
20 approach. Mr. Rodriguez can leave.

21 THE COURT: All right. Why don't you go
22 ahead and exit, Mr. Rodriguez?

23 MS. ARMIJO: I'll ask Marshal Joe Castro.

24 THE CLERK: Can we get another marshal,
25 please?

1 MARSHAL CASTRO: Your Honor, Joe Castro
2 with the marshals. We were notified a while ago
3 that there was a shakedown at Dona Ana, Anthony
4 Baca's cell, and they found a shank that was the
5 half -- back end of a spoon that was starting to be
6 sharpened, and was hidden behind his bathroom
7 mirror.

8 THE COURT: All right. Thank you, Mr.
9 Castro.

10 MARSHAL CASTRO: Thank you.

11 THE COURT: Can we take it up maybe after
12 lunch, Mr. Villa?

13 MR. VILLA: Yes, Your Honor. We can do it
14 before the jury comes in.

15 THE COURT: Let's do that. We'll see
16 y'all in about an hour.

17 (Lunch recess.)

18 THE COURT: All right. Let's go on the
19 record.

20 Mr. Villa, I think you had something you
21 wanted to raise before the lunch hour?

22 MR. VILLA: Yes, Your Honor. I received
23 an email from Deputy Mickendrow of the U.S. Marshals
24 concerning the issue of the tablet, and he was
25 searching, if the Court recalls, for Robert

1 Martinez' tablet. He informed me that he found it.
2 It's up north. He didn't say exactly what that
3 means. I think that might mean it's in PNM. But
4 likely, the other tablets -- we would ask the Court
5 order that they be immediately sent to the expert
6 hired by Mr. Baca's team so that he can review it
7 for the evidence of tampering and other things like
8 that.

9 MS. ARMIJO: Your Honor, I think that
10 before it's sent anywhere, it should be examined
11 by -- just like all the other tablets -- examined
12 first by New Mexico Corrections, because I don't
13 believe that this tablet was tampered with. And I
14 know that Mr. Martinez, through his attorney, is
15 very interested in getting his tablet back, and he
16 will be testifying. So I think it would cause a
17 delay. There has been no showing that he tampered
18 with it. That's the first step, to see if it was
19 even tampered with. And if it was not tampered
20 with, then it shouldn't (sic) be returned to the
21 inmate. Because that's what's been done with all of
22 these. Any that were tampered with or believed to
23 be tampered with were sent for analysis.

24 THE COURT: Well, do you have any trouble
25 with them making a quick examination to see whether

1 it's been tampered with, and then we'll go from
2 there?

3 MR. VILLA: Well, Your Honor, I guess I'd
4 want to hear from Mr. Mickendrow whether it has. I
5 mean, the fact that it was lost or missing or seized
6 from Mr. Martinez leads me to believe that it was
7 tampered with, because that's the only basis to take
8 it from Mr. Martinez.

9 I don't necessarily have a problem with
10 the Corrections Department looking at it. But
11 frankly, Your Honor, I've never seen them do
12 anything quickly. And we need to get this to our
13 expert before we cross-examine Mr. Martinez, because
14 we have found from the tablets that were provided,
15 that were seized, that there was quite a bit of
16 information on there that we can use in
17 cross-examination.

18 THE COURT: Well, why don't we do this.
19 Let's go ahead. Why don't you talk to Deputy
20 Mickendrow. And if we need to put something on the
21 record, we'll do it. See what he says. You go
22 ahead and get it to Corrections. Tell them to,
23 pronto, look at it and give us a report.

24 MS. ARMIJO: And I believe it's up north.
25 If somebody from -- is it up north or down here?

1 MARSHAL CASTRO: Deputy Mickendrow is
2 handling that matter.

3 MS. ARMIJO: The email said it was up
4 north. So what we can do is, I'll check as soon as
5 I'm done with this witness. I'll check to see if
6 they can have somebody up there do it. I know for
7 certain we had somebody down here, south, do them.
8 But that can be done within a day, Your Honor.

9 And the reason that the tablet was lost
10 was because Mr. Martinez was moved around. And they
11 were all seized as part of that day when we learned
12 that there was tampering. So it was not
13 specifically seized because it was. There were
14 several that were not tampered with.

15 THE COURT: All right. Let's see if we
16 can move it along and get some report. So if Deputy
17 Mickendrow gets in here, you can ask him, put it on
18 the record, and then we'll go from there.

19 MR. VILLA: Lastly, I think I may be
20 mistaken, but I don't believe we ever got
21 Mr. Timothy Martinez' tablet. I believe it was one
22 of the ones that there is some allegation of
23 tampering. The Government might be able to correct
24 me on that. Mr. Mickendrow, in his email, also
25 acquired whether there were additional inmates for

1 whom we want their tablets, and I think that may be
2 the one that's outstanding.

3 THE COURT: If that one is ready to go,
4 any problem turning that over to the expert?

5 MS. ARMIJO: Turning which one over? I'm
6 sorry.

7 THE COURT: Timothy Martinez's.

8 MR. VILLA: Timothy Martinez's.

9 MS. ARMIJO: Doesn't the FBI have those
10 and is analyzing them? I believe the FBI has that
11 and is analyzing them.

12 MR. VILLA: I think the issue that -- the
13 tablets that did get sent to the expert was because
14 the FBI didn't have sufficient time to analyze them.
15 And we're happy to let the FBI analyze them as much
16 as they want, but we'd like our shot at it.

17 MS. ARMIJO: I don't know where Mr.
18 Martinez' tablet is, because I believe the FBI does
19 not have his, based on the list that I've just seen.
20 I don't know where his tablet is.

21 THE COURT: It's not one of the ones
22 you're showing is at the FBI?

23 MS. ARMIJO: No. And we know his was
24 tampered with. We do know that. Timothy Martinez
25 has admitted, and he will testify that he tampered

1 with it.

2 THE COURT: We don't know where it is?

3 MS. ARMIJO: I don't know where it is.

4 MR. VILLA: Well, if it's in his
5 possession, I assume the Government can talk to his
6 attorney -- he's cooperating with the Government --
7 and it can be immediately seized and sent to our
8 expert.

9 MR. LOWRY: We got an email from
10 Mickendrow that said that he had the tablet in his
11 possession.

12 THE COURT: T. Martinez'?

13 MR. LOWRY: Yes, Your Honor. And the only
14 reason -- I think if we can get it Fed Ex'd out to
15 our expert, they can do a mirror image and return
16 the tablet in 36 hours.

17 THE COURT: Can we do that, Ms. Armijo?
18 It's not in the FBI's possession.

19 MR. LOWRY: My understanding it's in the
20 U.S. Marshal's possession.

21 THE COURT: Well, tell Deputy Mickendrow
22 that he should turn it over to your expert, give him
23 the address, tell him to get it out there. Tell
24 your expert not to destroy anything.

25 Ms. Standridge, is that going to be

1 Exhibit G, the Baca report? What's the next number?

2 THE CLERK: H.

3 THE COURT: I'm going to mark the
4 materials that Deputy Castro gave us -- mark it as
5 Exhibit H to the clerk's minutes.

6 MR. LOWRY: Sure.

7 THE COURT: All right. So you'll get an
8 address to Deputy Mickendrow, and you'll tell your
9 expert just to make an image and then return it?

10 MR. LOWRY: Absolutely.

11 THE COURT: All right. All rise.

12 (The jury entered the courtroom.)

13 THE COURT: All right. Everyone be
14 seated.

15 All right, Mr. Rodriguez. I'll remind you
16 that you're still under oath.

17 THE WITNESS: Yes.

18 THE COURT: Ms. Armijo, if you wish to
19 continue your redirect of Mr. Rodriguez, you may do
20 so at this time.

21 MS. ARMIJO: Thank you, Your Honor.

22 BY MS. ARMIJO:

23 Q. Mr. Rodriguez, I believe I'm putting back
24 up Government's Exhibit 755, and I left a little
25 sticky to myself that we had stopped talking

1 about -- did you have a conversation with Mr.
2 Sanchez?

3 A. At what point in time? At what point?

4 Q. That's what I'm looking at.

5 A. Oh, yes.

6 Q. I know I wrote here, this is March 7, you
7 asked Carlos Herrera about the paperwork, and then
8 Carlos Herrera confirms that he had paperwork; is
9 that correct?

10 A. Yes.

11 Q. Okay.

12 MS. JACKS: Objection, I think that
13 misstates the testimony. It was unclear about who
14 "he" is.

15 THE COURT: I'll let you work on it on
16 recross. Overruled.

17 BY MS. ARMIJO:

18 Q. Okay. That you spoke to?

19 A. Yes. After this conversation with Carlos
20 Herrera at the yellow pod door, we went to yard.
21 And in the yard, I spoke to Daniel Sanchez about
22 them having the paperwork.

23 Q. Okay. So the yard incident -- is that
24 between Number 1 and 2?

25 A. Yes, ma'am.

1 Q. Okay. So that would be, like, 1.5 or
2 something?

3 A. It's an hour yard.

4 Q. And that would take place between 1 and 2?

5 A. No, let me see.

6 Q. Because Number 1 is, you went to the yard;
7 on the way, you talked through yellow pod main door.

8 A. This is maybe 9:00 to 10:00.

9 Q. Okay. So 9:00 to 10:00, so it's before
10 Number 1?

11 A. Yes. It's either 9:00 to 10:00, or 10:00
12 to 11:00.

13 Q. What would between 9:00 to 10:00?

14 A. We're in yard.

15 Q. Okay.

16 A. This is right here, where we're -- they're
17 talking about before lunch, we're on our way going
18 to yard.

19 Q. Okay.

20 A. So it says 11:00 to 11:30; before lunch,
21 11:00 to 11:30. That's the lunch hour that she put.
22 That's not the time that I was speaking to Carlos
23 Herrera. That's just before it.

24 Q. So lunch is between 11:00 and 11:30?

25 A. Right, and this conversation at the yellow

1 door took place before that.

2 Q. Okay. So this is: Went to yard and on
3 the way, and now I guess we want to get to something
4 happened at the yard; correct?

5 A. Right; correct.

6 Q. And that would be between what's marked
7 Number 1 and Number 2?

8 A. It would be attached to Number 1.

9 Q. Okay. Let me just do this. I'm going to
10 get another piece of paper and write Number 1, and
11 I'm going to write "continued." Okay. So what
12 happened at the yard?

13 A. After this conversation at the door, we
14 leave the unit, blue pod, and we go out the dog run,
15 and we continue to go to the big yard.

16 Q. Who is "we"?

17 A. The whole blue pod: Myself, Daniel
18 Sanchez, Jerry Montoya, Jerry Armenta, Ronald
19 Sanchez --

20 Q. Do you know if Rudy Perez went, or did he
21 say in his room, do you think?

22 A. I think he stayed in his room that day.
23 Javier Molina went, and I think that's it.

24 Q. Okay. And while you're at yard, do you
25 have a conversation with Daniel Sanchez?

1 A. I did.

2 Q. Okay. And what is that conversation?

3 A. Myself and Daniel Sanchez, we spoke to
4 Ernest Guerrero about Benjamin Clark attempting to
5 put a hit on Lupe Urquizo.

6 And after that conversation I spoke to
7 Daniel Sanchez about the paperwork arriving, and
8 just let him know it was there. We didn't really go
9 into depth on it. I told him it was there.

10 Q. What was his reaction?

11 A. He said, "Okay."

12 Q. So I'm going to put here "MR tells DS at
13 the yard that paperwork arrived."

14 A. That's correct.

15 Q. Okay. And is there any further
16 conversation at that point?

17 A. I think there was a mention of Mauricio
18 Varela getting his property. And that was about it.
19 We went our ways.

20 Q. Okay. Then Number 2, you say, "MR,"
21 that's you, "gets paperwork from under the emergency
22 door." That was after lunch; correct?

23 A. Correct.

24 Q. Who gives you the paperwork?

25 A. Carlos Herrera.

1 Q. Okay. Under the door. I'm going to put
2 "from Carlos Herrera." And is anybody with you at
3 that point?

4 A. No.

5 Q. Then what do you do with that?

6 A. I called Dan Dan, and we proceed to the
7 stoop in front of my cell, cell 111, and we read it.

8 Q. And so between Number 2 -- and you read it
9 and then you pass it back later?

10 A. I read it, I put it in the back in the
11 manila envelope, and I pass it back.

12 Q. Okay. Who do you read it with?

13 A. Daniel Sanchez.

14 Q. Okay. So I'm going to add in here "DS."
15 I don't want to mess that up. "DS and MR review
16 paperwork." And at some point while reading the
17 paperwork, did you get a chance to fully look at it?
18 Or what happened?

19 A. No, I did not.

20 Q. What happened?

21 A. I was going through it, and before I
22 finished reading it, Dan said, "It's done."

23 And I was like, "Okay. Well, it's done,
24 then."

25 Q. And what did you take "It's done" to mean?

1 A. "It's done" means he's going to get hit.
2 I was still looking for names that he mentioned, and
3 anything like that that was really real serious.

4 Q. Now, why didn't you at this point say,
5 "Hold on a minute. Let me look some more." Why did
6 you just at that point just concede to it?

7 A. I knew that it would go against the
8 politics and I wouldn't get to move any further
9 within the SNM if I say, "Don't hit him," because it
10 looks like I'm self-serving; that I just got to
11 Southern New Mexico Correctional Facility, and I
12 want to stay there longer and not have a hit be
13 conducted, because I know that if there is a hit
14 conducted, the majority of us are going to go back
15 to PNM Level 6. It would look like I was
16 self-serving over the rule of the onda.

17 Q. And where was Daniel Sanchez', his
18 position with the SNM, in comparison to yours?

19 A. I was right there next to him. He was my
20 big brother. I was his right-hand man. He was the
21 leader.

22 Q. Then the next thing we have here is "MR
23 and DS pass the paperwork back"?

24 A. Yes.

25 Q. Okay. And who do you pass the paper

1 paperwork back to?

2 A. To Carlos Herrera.

3 Q. And how did that come about? Did you call
4 him again? Before you testified that you said,
5 "Hey, Lazy."

6 A. We went to the door, called Lazy, and when
7 I gave it to him, Dan had mentioned something about
8 Wednesday. And I take it Carlos Herrera took it as
9 we wanted to wait till Wednesday because there was
10 visits, and Carlos Herrera said, "Just get it done."

11 I told him, "Hold on. We'll figure it
12 out. Don't worry about it. We'll figure it out."

13 And me and Daniel Sanchez left the door.

14 Q. So CH says, "Just get it done."

15 A. Yeah.

16 Q. After that, between 3:00 and 4:00, you
17 have "MR physically took the piece from the walker."

18 Now, I recall your testimony was that you
19 talked about how you had walked by Rudy Perez' cell,
20 and Daniel Sanchez was there. And then Daniel
21 Sanchez called you back. Is this somewhere around
22 here?

23 A. Yes, but I think before it got to that
24 point, there was a time where I think after Daniel
25 and I read it that -- I can't recall exactly, but I

1 asked him, "You and me, or what?"

2 And he said, "No, I have some guys need to
3 earn their bones."

4 So that's somewhere in between. Let me --
5 yes.

6 Q. Now, is that while you still had the
7 paperwork?

8 A. It might have been before we had the
9 paperwork. Because when I left, when Daniel Sanchez
10 and I left the door from giving the paperwork to
11 Carlos Herrera, he stopped at Rudy Perez' house.

12 Q. Okay. So we'll get to that in a second.

13 A. Okay.

14 Q. You said, "You and me," and then he said,
15 "No, I have somebody."

16 Where do you think that took place?

17 A. Let me see.

18 Q. Was that potentially after you confirmed
19 that the paperwork was there through Carlos Herrera?

20 A. It has to -- we came back from the yard
21 and it was a conversation that he and I had at the
22 table.

23 Q. Okay. So was that before you get the
24 paperwork?

25 A. I'm trying to recall. It might have been

1 a little bit before.

2 Q. Maybe between 1 and 2?

3 A. It has to be in between 12:00 and 1:00.

4 Q. Oh, okay. I'm sorry. I meant between 1
5 and 2.

6 A. Okay. Yeah, 1 and 2, on that number.

7 Q. Okay. So between 1 and 2?

8 A. Because we come out after count to 12:00.

9 Q. So I'm going to put, like, a 1.5 on the
10 other page, and this is after count?

11 A. That's correct.

12 Q. Okay. After count. Then you said that
13 you had a conversation with Daniel Sanchez?

14 A. Yes.

15 Q. And what do you say to him?

16 A. "Me and you, or what?" Same conversation
17 about covering the cameras took place at this time.

18 Q. And what's his response?

19 A. That the cell is a blind spot.

20 Q. No, no, no, no, no. After you say "me or
21 you or what" --

22 A. He says, No, he has some people that need
23 to earn their bones.

24 Q. What did you take that to mean?

25 A. He was going to choose a couple

1 individuals to conduct the hit.

2 Q. All right. Then I'm going to put that you
3 had a conversation about the cameras.

4 A. Right.

5 Q. What was that about?

6 A. About covering the cameras.

7 Q. And what did you discuss?

8 A. I guess where -- I think it was where the
9 hit was going to take place. And I asked him about
10 covering the cameras, and he said, "No, it's a blind
11 spot. Javier Molina's cell."

12 Q. Okay. So now we're going to go to --
13 let's see. "Just get it done." I believe we left
14 off at Number 3 says, "Just get it done," by Carlos
15 Herrera?

16 A. That's correct.

17 Q. And you were talking about where -- at
18 what point -- you mentioned yesterday you said you
19 saw Daniel Sanchez by Rudy Perez' cell.

20 A. When we were walking back from the
21 emergency door, he stopped at Rudy Perez' house, and
22 I continued on to my cell to look for the weapon I
23 had on the hamper. I had been working on it.

24 Q. Okay. So right here at Number 3?

25 A. Yes.

1 Q. So now we're going to go to -- we're going
2 to add to Number 3. And then you see Daniel Sanchez
3 at Rudy Perez' cell?

4 A. Yeah. As we were walking back from the
5 emergency door, he stops at Rudy Perez' cell, which
6 was the second door away from the emergency door.

7 Q. And then Number 4 is "MR physically took
8 piece from walker and put it in hamper." What
9 happened before then?

10 A. I was in my cell looking at the weapon I'd
11 been working on in the hamper. And Daniel Sanchez
12 called me to Rudy Perez' door, which was closed at
13 the time.

14 Q. I'm going to put -- just so that we're
15 clear, as part of Number 3, the continuation, "DS
16 called to you RP cell"?

17 A. Yes.

18 Q. Okay.

19 A. He pointed out the bar on the walker.

20 Q. Okay.

21 A. And told me to get that.

22 Q. All right. Then I believe Number 4 is "MR
23 physically took the piece from the walker and put in
24 hamper in your cell"; is that correct?

25 A. Yes.

1 Q. Now, when you did that, Rudy Perez was
2 present?

3 A. In his cell, yes. Not in my cell, in the
4 hamper, but --

5 Q. And let's see. So I'm going to put here,
6 "RP present." How's that?

7 A. Yes.

8 Q. What did Rudy Perez tell you?

9 A. "I'm down for whatever, as long as it's
10 not me."

11 Q. Okay. All right. Then we're going to go
12 to the second page of what will be Exhibit Number
13 755.

14 Then there was the phone yard. Can you
15 explain, what does the phone yard mean?

16 A. The phone yard is a smaller rec cage right
17 outside the unit where there is a handball court, a
18 punching bag, a medicine ball, and a pull-up bar.
19 They call it the phone yard because the caseworkers'
20 offices are right there. If you go and make legal
21 calls or emergency phone calls, you go to that area.

22 Q. Just to be clear, that's an outside yard?

23 A. An outside yard, yes, ma'am.

24 Q. And this isn't the area that we've seen
25 inside the pod where there is a phone?

1 A. No.

2 Q. Okay. And you were making shanks during
3 that time period?

4 A. Yes.

5 Q. Okay. Anything else significant during
6 that period?

7 A. No.

8 Q. Number 6 was, the wheelchair program comes
9 in and you have to speak to Timothy Martinez. Now,
10 I think we may have left something out, because
11 where is the plan that you need to -- in here about
12 you having to talk to Tim Martinez?

13 A. The plan was at the time when he said that
14 he had people to earn his bones --

15 Q. Okay.

16 A. -- I believe that at some point in time in
17 between there and getting that weapon, he told me to
18 speak to Timothy, because Timothy wouldn't listen to
19 him.

20 Q. Okay. So that would be right here with
21 his conversation about people having to earn their
22 bones?

23 A. Yes, in between the time I got the weapon
24 and that.

25 Q. Okay. So the weapon is Number 4?

1 A. No -- oh, yes, yes. Let me see.

2 Q. The weapon is Number 4?

3 A. Yes, in between 3 and 4.

4 Q. So it's before you get the weapon or
5 after?

6 A. Before. I think it's right there by 1.5.
7 Above. Above.

8 Q. Above 1.5?

9 A. Yes, in this same area right here.

10 Q. So is it part of 1.5?

11 A. Part of 1.5, yes.

12 Q. It says, "No, have some people that need
13 to earn your bones," right there?

14 A. I don't recall exactly when he told me to
15 talk to Timothy, but it had to be around this area.

16 Q. Then you had a conversation about cameras,
17 and then I'm just going to put over here -- and I'm
18 going to put "Conversation about Timothy." What did
19 he tell you and who told you?

20 A. Jerry Armenta and Daniel Sanchez.

21 Q. Daniel Sanchez told you what?

22 A. That I need to speak to Timothy, because
23 Timothy would not listen to him.

24 Q. What did he tell you to tell Timothy?

25 A. That he needed to knock him the fuck out.

1 Q. Knock who out?

2 A. Molina.

3 Q. What was this conversation about?

4 A. About the hit on Javier Molina.

5 Q. So he told you to speak to Timothy

6 Martinez, and put "to knock him the fuck out"?

7 A. Yes, ma'am.

8 Q. Is that --

9 A. That's exactly what he said.

10 Q. Now, then, we're going to "Wheelchair
11 program comes out and Tim Martinez." You speak with
12 him at that point; correct?

13 A. I do.

14 Q. Okay. Is it just you and Mr. Martinez?

15 A. Just me and Timothy Martinez.

16 Q. And then, let's see, the phone yard comes
17 in, and then what happens at that point?

18 A. Everyone is just hanging around. There's
19 a few people that I think jumped in the shower,
20 waiting for 4:00 count.

21 Q. Because there is a very short time period,
22 I think 7 and 8.

23 A. They gave the inmates about 10 minutes to
24 get their stuff together, make their last coffee or
25 soup, and go into count.

1 Q. Anything happen in that period that you
2 can recall?

3 A. No.

4 Q. So then we go to count, and dinner, which
5 is when you are in your cell; is that correct?

6 A. The 4:00 p.m. to 5:00 p.m.?

7 Q. Yes.

8 A. Yes, ma'am.

9 Q. And during this count, that's when you're
10 making weapons?

11 A. I'm sharpening them and putting handles on
12 them.

13 Q. Okay. And then at 5:00 p.m. the cell
14 doors open for everyone; is that correct?

15 A. Yes, ma'am.

16 Q. It says that you talked to Timothy
17 Martinez?

18 A. Yes.

19 Q. And what is the point of that
20 conversation?

21 A. Well, once the doors opened, I got up on
22 the top area by the TV, jumped the rail, pulled
23 myself to the top tier, and went and told him if
24 he's all right, "Are you ready?"

25 Q. Who said that?

1 A. I did.

2 Q. To who?

3 A. Timothy Martinez. And "I've been in this
4 position before. It's going to be all right. I'm
5 going to be right there. Don't worry about it."

6 Q. Now, was there a change in plan between --
7 for Timothy Martinez to knock him out, to choking
8 him?

9 A. Yes.

10 Q. When did that take place?

11 A. I think --

12 Q. That decision?

13 A. I think that decision took place a little
14 bit after the doors opened at 5:00 count.

15 Q. So is this while you're talking to Timothy
16 Martinez right here?

17 A. No.

18 Q. Okay.

19 A. In the camera footage, you see him go to
20 his house. That's when I go speak to him.

21 Q. Closer to 5:15-ish or 5:10?

22 A. Correct.

23 Q. So you first have a conversation with
24 Timothy Martinez. Then it says, "Jerry Armenta and
25 DS."

1 A. At the time I spoke to Timothy Martinez,
2 that's when he gave me the weapon that was Javier
3 Molina's.

4 Q. So I'm going to put here "MR gets Javier
5 shank." How is that?

6 A. Yes.

7 Q. Then "Jerry Armenta and DS," what's going
8 on with that?

9 A. When I come back down from Timothy
10 Martinez's house, I go into my room. When I turn
11 around, there's Jerry Armenta and Daniel Sanchez.
12 And I gave Armenta the shank.

13 Q. Okay. Now, you see Jerry Armenta and
14 Daniel Sanchez talking?

15 A. No.

16 Q. Okay. Are you a part of that
17 conversation?

18 A. I was never a part of any conversation
19 with Armenta, other than telling him Daniel Sanchez
20 was going to take care of his weapon.

21 Q. Okay. How do you know that Jerry Armenta
22 and Daniel Sanchez were talking? Did you see them,
23 or were you told by somebody to give him a shank?

24 A. I was told by Dan -- when they came to my
25 room, I was going to change my socks. I thought I

1 was going to take them to their cells. And Daniel
2 Sanchez came into the room with Armenta, and that's
3 when I gave Armenta the weapon. I never spoke with
4 him about the hit or nothing.

5 Q. So they just come into your room, and no
6 conversation?

7 A. I already knew what time it was, and who
8 the weapons were for.

9 Q. So I'm going to put "Jerry Armenta and DS
10 in" your cell?

11 A. Yes.

12 Q. And then with the three of you there, you
13 give Armenta the shank?

14 A. Yes, ma'am.

15 Q. Okay. And it's the three of you in your
16 cell.

17 A. Yes.

18 Q. Okay. Then do you go -- and at that
19 point, is that when you tell Jerry Montoya what's
20 going on?

21 A. After I gave Armenta the weapon, Daniel
22 Sanchez asked me if I had told -- he used his
23 nickname, Plazi, which is Jerry Montoya. He told
24 me, "Did you tell Plazi?"

25 I told him, "No. You were supposed to

1 tell him."

2 He goes, "Tell him."

3 And that was never part of the plan. I
4 was supposed to talk to Timothy, and he was supposed
5 to talk to Armenta and Montoya. At that time, I
6 wasn't really happy about that. I said, "All
7 right."

8 So I went to Jerry Montoya's cell, and I
9 gave him his weapon.

10 Q. I'm writing here, "Told by DS to go tell
11 Jerry Montoya."

12 A. And give him the weapon.

13 Q. "And give weapon." And is that what you
14 did?

15 A. Yes, ma'am.

16 Q. Okay. Now, before the assault begins, I
17 think we see you going down and talking on the table
18 with Mr. Sanchez?

19 A. Yes.

20 Q. Tell us about that and where that occurs.

21 A. I was coming from speaking with Timothy
22 Martinez. He told me that he was going to choke
23 Molina out. So I went to go tell Daniel Sanchez
24 what Timothy was going to do, instead of knock him
25 out physically.

1 Q. So this is 9 and 10. I'm going to do a
2 9.5 because that occurred before the assault;
3 correct?

4 A. Yes.

5 Q. I'm going to write -- and that's on the
6 video; correct?

7 A. Me talking to Daniel Sanchez?

8 Q. Yes.

9 A. Yes, ma'am.

10 Q. I'm sorry, I should put who goes and
11 tells. So "MR goes to DS." Now, why do you go tell
12 him about it?

13 A. Because it's a change in his plan.

14 Q. A change in whose plan?

15 A. Daniel Sanchez' plan.

16 Q. Okay. Getting approval?

17 A. Getting approval, and letting him know
18 that that's the way it's going to go down.

19 Q. Does he approve that change?

20 A. He just tells me to make sure it goes
21 right and to not leave the drugs, not to leave the
22 dope.

23 Q. Make sure it goes right?

24 A. Yes.

25 Q. And don't leave the dope?

1 A. Yes.

2 Q. All right.

3 A. I was walking away. He was calling the
4 halfers.

5 Q. Okay. The halfers. I believe you
6 explained that yesterday.

7 A. Yes.

8 Q. And then we have Number 10. I believe
9 that's on here, the assault begins on Molina;
10 correct?

11 A. Yes.

12 Q. Okay. And I'm just going to put on
13 here -- that's on the video; correct?

14 A. Yes, it is.

15 Q. I'm going to make a little notation to
16 video.

17 Now, after the assault, is there something
18 that you recall that you testified to that occurred
19 after the assault in reference to Daniel Sanchez
20 going to that emergency door?

21 A. Yes. He went to the top emergency door
22 and said, "How do you like that, baby?"

23 Q. And where is that in these numbers? Is
24 that after the assault?

25 A. It's after the assault. After the -- I

1 think I'm barely coming out of the shower, the top
2 shower.

3 Q. Okay. And so you're coming out of the
4 shower?

5 A. Right.

6 Q. And is the shower near that emergency
7 door?

8 A. It's on the top tier. I could see it when
9 you're coming out just straight.

10 Q. So what do you hear and see?

11 A. "How do you like that, baby," with Dan.

12 Q. "DS" for Daniel Sanchez. What does he
13 say?

14 A. "How do you like that, baby?"

15 Q. And how was he saying it?

16 A. Just like --

17 Q. I mean, was he saying, "How do you like
18 that baby," or was he excited?

19 A. He was excited, like a bragging tone.

20 Q. A what tone?

21 A. A bragging, like bragging, like, "How do
22 you like that, baby?" Yelling it loud through the
23 crack of the door.

24 Q. Okay. To the emergency door?

25 A. Yes, ma'am, the top tier emergency door.

1 Q. Do you know who was on the other side?

2 A. No. He was just yelling it to the pod.

3 There was no one inside, I don't think. Someone
4 yelled back before I went into my cell, "Fuck, yeah,
5 Dan."

6 Q. Do you know who that was?

7 A. It sounded like Carlos Herrera or Efrain
8 Martinez.

9 Q. You're not sure? Just somebody responds
10 to it?

11 A. I know -- from solitary confinement with
12 these individuals, I recognize their voices. Either
13 one of the two.

14 Q. Okay. So either Carlos Herrera or who?

15 A. Efrain Martinez.

16 Q. Respond back?

17 A. Yes.

18 Q. Now, I believe the investigation started,
19 and at some point you all were moved into different
20 cells?

21 A. Right.

22 Q. When did that occur?

23 A. After we're all locked down, I think when
24 the officers seen a drop of blood in front of my
25 house outside the cell.

1 Q. Right.

2 A. I start arguing with the CO. I got a hand
3 sanitizer with water and threw it out.

4 Q. Okay.

5 A. They attempted to take pictures of me. I
6 covered my window. And I put away the weapon, put
7 away the syringe, ate some food, and I got
8 handcuffed, and they took me out.

9 Q. I'm going to put that you were in your
10 cell. Was everybody locked down?

11 A. Everybody was locked down.

12 Q. I'm going to put "MR and others locked
13 down." Any idea what time that was? If you don't
14 remember, we're not going to put a time.

15 A. No, I don't remember. I don't know what
16 time it was.

17 Q. Now, and then there was something
18 yesterday you talked about, and then after that,
19 were you moved to another cell?

20 A. Yes.

21 Q. Was everybody moved to another cell?

22 A. At first, just myself and Jerry Armenta.

23 Q. Okay. Eventually was somebody else put
24 near you?

25 A. Yes. When I was moved to 2-A or 2-B, I

1 was living with Rudy Perez, Jerry Montoya, Jeffrey
2 Madrid, and Michael Hernandez; and Rudy Perez lived
3 right below me.

4 Q. Okay. I'm talking about the night of the
5 incident.

6 A. Yes, ma'am.

7 Q. Okay. So -- because I believe you made
8 reference to a comment yesterday about "Not my first
9 rodeo."

10 A. Right.

11 Q. Where is this conversation taking place?

12 A. This conversation is taking place in
13 either -- I don't know the unit, but I'm in the top
14 cell and Rudy Perez is living right under me.

15 Q. Is it after this, that same night, early
16 morning?

17 A. That same night, early morning, yes.

18 Q. So it's after you're moved to other cells?

19 A. Right. The conversations through the air
20 ducts.

21 Q. Okay. So I'm going to put "MR and RP
22 conversation."

23 MS. JACKS: We'd ask that that portion of
24 the testimony and the exhibit be limited to Mr.
25 Perez.

1 THE COURT: All right. I'll give a
2 limiting instruction to that effect. This testimony
3 can only be used in consideration of the charges
4 against Mr. Perez, not as to the other three
5 defendants.

6 MS. JACKS: And will that be marked on the
7 exhibit?

8 MS. ARMIJO: I can. I certainly can.
9 I'll put an asterisk here, and put "as to RP only."
10 BY MS. ARMIJO:

11 Q. All right. And you have a conversation
12 through the vents?

13 A. Yes.

14 Q. And I believe you said he indicated not
15 his first rodeo?

16 A. Yeah. This wasn't his first rodeo.

17 Q. And was there also conversation that you
18 tried to quash?

19 A. Yes.

20 Q. What was that in reference to?

21 A. When he came back from speaking to whoever
22 he spoke to, the interview process, he calls me and
23 asks me if everything is all good. I told him,
24 "Yeah, everything is all good."

25 He goes, "No, is everything all good with

1 those things?"

2 I told him, "Hey, hey, everything is all
3 good."

4 He goes, "Well, Dan," this and that --
5 "Everything is all good. Don't worry
6 about it. Everything is all good."

7 Q. I'm going to put "MR and RP conversation."
8 I'll just put "all good" as a little summary.

9 MR. LOWRY: Your Honor, we'd like a
10 similar limiting conversation with respect to the
11 Sanchez comments.

12 THE COURT: These will just be used
13 against Mr. Perez, not any of the other defendants.

14 Q. Now, does that appear to be kind of a
15 somewhat summary, including not just your actions
16 but those of other people?

17 A. A short version, yes, summary.

18 Q. Now, you were also asked questions by Ms.
19 Bhalla about an incident with Carlos Herrera that
20 you told law enforcement about?

21 A. Correct.

22 Q. Do you recall that?

23 A. The questions she asked me.

24 Q. Yeah, and do you recall her asking you
25 questions -- and this is just a yes or no -- about

1 an issue with Carlos Herrera regarding basically a
2 hit on him --

3 A. Yes, ma'am.

4 Q. -- while transportation?

5 A. Yes, ma'am.

6 Q. Okay. Now, in reference to that, is that
7 something that you told law enforcement on your own?

8 A. I did.

9 Q. And did you tell law enforcement that as
10 part of -- why did you tell law enforcement that?

11 MS. JACKS: Your Honor, I'm just going to
12 object and ask to approach.

13 THE COURT: You may.

14 (The following proceedings were held at
15 the bench.)

16 MS. JACKS: Sorry to interrupt. I thought
17 this was the area where Ms. Bhalla was leading the
18 witness because of her concern that something
19 inadmissible would come up against Mr. Sanchez. So
20 the open-ended question "Why" was just asking for
21 the inadmissible testimony.

22 MS. ARMIJO: No, I planned to lead him. I
23 asked him why. I didn't ask him what. I do plan to
24 lead him through it, so the specific deeds of the
25 defendants are not brought out.

1 MS. JACKS: I'll ask him.

2 MS. ARMIJO: No, I think it's important.

3 MS. JACKS: I'm concerned the witness is
4 going to state inadmissible --

5 MS. ARMIJO: I'm asking him a leading
6 question: Why.

7 THE COURT: Let's take it one at a time,
8 see if we can get through. Sounds like she's trying
9 to avoid it.

10 (The following proceedings were held in
11 open court.)

12 THE COURT: All right, Ms. Armijo.

13 BY MS. ARMIJO:

14 Q. Mr. Rodriguez, did you tell law
15 enforcement about that plan in an effort to actually
16 save Carlos Herrera's life? In other words, was
17 this something that law enforcement knew ahead of
18 time, or was it something that you were telling them
19 about?

20 A. I was telling them about. I was making
21 them aware of --

22 Q. I'm just going to -- you became aware of a
23 situation regarding it, regarding a plan in
24 reference to --

25 A. Yes.

1 Q. -- Mr. Herrera?

2 A. Yes, ma'am.

3 Q. And was that -- and don't tell me who, but
4 did you originate with that plan?

5 A. No.

6 Q. Was it other people? And again, don't
7 give me names. Was it other people that came up
8 with that plan?

9 A. That's correct.

10 Q. And so in reference to the reason why they
11 were going to do that -- and again, I don't want
12 names of people -- was there more than one reason
13 that Carlos Herrera had a hit out on him?

14 A. There was a variety of reasons.

15 Q. Okay. And did some of those reasons
16 include the fact that his mom and brother were
17 interviewed by law enforcement?

18 A. Yes, ma'am.

19 Q. In addition to some of his recordings?

20 A. That's correct.

21 Q. All right. And because of that, then --
22 and just so that we're clear, I believe you've
23 indicated that your position is that of a soldier,
24 or was of a soldier?

25 A. At the time of the Molina?

1 Q. Yes. Well, the time of this incident, the
2 incident that you're talking about was while this
3 case was pending, "this case" being the federal
4 prosecution; correct?

5 A. Yes.

6 Q. During that time, was it somebody else,
7 not you, that came up with the plan to hit Carlos
8 Herrera?

9 A. At that time I was already --

10 Q. Go ahead.

11 A. A high-ranking SNM member.

12 Q. And why was that?

13 A. Because a lot of the individuals that were
14 leaders got sent out of state, and they weren't
15 there to be voted in, or they needed some guidance.

16 Q. Okay. So was this after the Molina?

17 A. It was after the Molina.

18 Q. Okay. Did doing Molina elevate you?

19 A. Yes.

20 Q. When this plan happened, was it other
21 people that came up with the plan?

22 A. Yes, ma'am.

23 Q. Not you?

24 A. Yes, ma'am.

25 Q. Then you went to law enforcement with

1 this?

2 A. I did.

3 Q. Now, speaking of that, the first time that
4 you went, that you agreed to -- or I should say when
5 you decided to cooperate, you indicated previously
6 that was on October 24; is that correct?

7 A. That's correct.

8 Q. Of just last year?

9 A. That's correct.

10 Q. And when you came to court, you were not
11 expecting to testify; correct?

12 A. No, ma'am.

13 Q. To cooperate?

14 A. No, ma'am.

15 Q. And at the end of that meeting, that
16 initial meeting where after you had decided to
17 cooperate, what did you do voluntarily?

18 A. I turned over weapons. I gave the
19 reporting officer information and signed a Kastigar
20 letter.

21 Q. So you had come to court with a shank; is
22 that right?

23 A. Two of them.

24 Q. And nobody knew you had a shank; correct?

25 A. That's correct.

1 Q. But you voluntarily gave that up?

2 A. That's correct.

3 MR. VILLA: Leading.

4 THE COURT: Overruled.

5 BY MS. ARMIJO:

6 Q. Now, in reference to that, I believe you
7 were asked questions.

8 MS. ARMIJO: And Your Honor, may we
9 approach on this?

10 THE COURT: You may.

11 (The following proceedings were held at
12 the bench.)

13 MS. ARMIJO: Your Honor, I believe
14 yesterday when the witness was cross-examined, the
15 witnessed indicated that there was -- one of the
16 reasons he was starting to explain why he cooperated
17 was the fact that -- I believe he would say he
18 wasn't allowed to finish. But the fact he felt when
19 he was going to trial that he was being used
20 basically as a guinea pig. My words, not his.

21 The defense objected at that point, saying
22 they felt it went into a joint defense agreement.
23 However, through the course of probably a full day
24 of cross-examination, at least several hours, the
25 defense has on and on indicated that he had other

1 motives to cooperate, have questioned him, have
2 indicated, on and on, giving other reasons as to his
3 cooperation. So I think I should be allowed to
4 fairly ask the open-ended question about all the
5 reasons he decided to cooperate on that day on the
6 eve of trial.

7 THE COURT: What is it?

8 MR. MAYNARD: They're reading the
9 real-time on the prosecution counsel table.

10 THE COURT: Block it, Mr. Beck.

11 All right. Let me ask a few questions.
12 What is it that you want the witness to say? What
13 is it that you want to add to the dialogue of
14 reasons? Is there a way that we can get what you
15 need without getting to this joint privilege?

16 MS. ARMIJO: I guess I can ask him leading
17 questions as to -- but I think he has a right to be
18 able to fully explain why he made this decision,
19 given all the --

20 THE COURT: I want to be a little
21 protective of other defendants here and not have him
22 sort of waive the privilege. But if you could frame
23 what you want him to say, what would you have him
24 say? What is it that you want him to say?

25 MS. ARMIJO: I believe what he was going

1 to say before he was cut off -- and I have not
2 spoken to him -- I don't know, I didn't ask him,
3 "Hey, what were you going to say" -- what he was
4 going to say, and again, I believe this was on
5 cross-examination, he was going to say that he felt
6 like he was going to be -- what did he say? He felt
7 like he was going to be used as a test to see how
8 things would play out; that people would get to see
9 the Government's evidence, kind of a test case for
10 our evidence, and gang experts and things like that.
11 That's what I would anticipate him saying. Again, I
12 haven't spoken to him, but he was cut off.

13 THE COURT: How would that invade any sort
14 of joint privilege?

15 MR. LOWRY: Well, Your Honor, even having
16 this conversation would invade the joint privilege,
17 in my view. But I can tell you, well, I think if we
18 really want to go down this path, we need to have a
19 hearing outside the presence of the jury, because I
20 feel strongly that that witness would be very close,
21 if not perjuring himself, if he would say that.

22 THE COURT: How am I going to make that
23 determination?

24 MR. LOWRY: Because it was said in the
25 context of a privileged setting.

1 (To Mr. Hernandez.)

2 THE COURT: Mr. Hernandez.

3 (At the bench.)

4 I want him to come up if we're talking
5 about perjury of a witness here. I want to get his
6 attorney involved.

7 MS. JACKS: Asking about joint defense has
8 to be outside the presence of the Government or else
9 we'll waive it.

10 THE COURT: I'm not seeing how this waives
11 any sort of privilege.

12 MS. JACKS: I'm not understanding what the
13 Court is saying. You don't understand how that
14 could be privileged? How that concept, if it's
15 true, could be privileged? Is that what you're
16 saying?

17 THE COURT: I don't understand how him
18 saying "I felt like I was a guinea pig" --

19 MS. JACKS: Let's just suppose that there
20 was a meeting with defendants and their lawyers in
21 which that topic was discussed, and that was in a
22 meeting that was pursuant to a joint defense
23 agreement, providing that defense in that situation
24 could communicate freely, as if they were
25 communicating with their own lawyer, under the joint

1 defense privilege.

2 THE COURT: People still get to say they
3 feel like they're getting railroaded by the rest of
4 the defendants if it's discussed at a meeting. I
5 don't think it waives the privilege. If he feels
6 like he was, you know, going to be used and set up,
7 he has a right to say that. I'm just not seeing the
8 problem, if he wants to testify as to why he wanted
9 out.

10 MR. VILLA: Your Honor, if he feels that
11 way, that's fine. But his discussions about feeling
12 that way arose -- without getting into all of the
13 details -- arose under the joint defense privilege.
14 The other thing, the things he's going to say are
15 going to be contradicted by other people that we
16 might have to call that were present for that
17 meeting, including his attorney. I don't want to
18 get into that situation.

19 THE COURT: I don't want to get into it
20 either, but I'm not following on this. This seems
21 to me just kind of specious talk, really.

22 MR. VILLA: It's not.

23 THE COURT: Y'all have been asking him
24 repeatedly why he pled guilty. He gets to tell why
25 he pled guilty. He feels like the rest of the

1 defendants are using him. That's one of the
2 reasons.

3 They think he's going to commit perjury
4 here if he's asked why he was going to -- why he
5 pled guilty, because Ms. Armijo thinks he's going to
6 say that he was -- he felt like he was a guinea pig,
7 and that they were just going to use him to try the
8 case and see what the Government's evidence is.

9 I don't know what he's going to say. But
10 do you see him committing any perjury if he gives
11 that answer in response that question: Why did you
12 plead guilty?

13 MR. HERNANDEZ: I don't, Your Honor,
14 because he has two cases and he was going to trial
15 on the first one initially. So he was indicted
16 on -- what is it -- 4269 and 4268, and he was queued
17 up before Your Honor November 6, I believe. And so
18 I think, given that situation, I think that was part
19 of his response that he thought that they were using
20 him.

21 THE COURT: Do you feel if he testifies
22 that way, he's breaking any sort of joint privilege
23 by testifying that way?

24 MR. HERNANDEZ: No, Your Honor. No. I
25 don't see how. Because nothing -- the few times or

1 the one time I think that we -- I don't think there
2 is any information that he is going against by
3 testifying that way. But if it's going to be an
4 issue, I would like to review the agreement just to
5 make sure that there is not an issue.

6 THE COURT: Do you have a copy of the
7 agreement?

8 MR. HERNANDEZ: I don't believe I have it
9 with me. I'm sure I can get one.

10 THE COURT: Do y'all have a copy?

11 MR. VILLA: I think I might have one. But
12 Your Honor, I'm representing to you that his
13 testimony about that came within the context of a
14 joint defense meeting. That's privileged. And
15 there is going to be information that contradicts
16 him that comes from that. And I have other issues
17 with -- I mean, I don't know how to say this, but
18 subsequent breaches of that J.D. agreement by Mr.
19 Rodriguez and Mr. Hernandez. And you know, I
20 question Mr. Hernandez' view about whether this
21 violates the joint defense agreement. We don't want
22 to dive down this rabbit hole of having to get into
23 what those other issues are. I think it's best to
24 leave that information out. It's also misleading
25 because it was the Government that had 4269, even

1 though it's a higher case number, going ahead of
2 4268. In terms of the trial order, that was beyond
3 our control.

4 MR. CASTELLANO: The problem is, they're
5 trying to paint Mr. Rodriguez into a corner, and
6 using the agreement as a sword and shield. He pled
7 guilty and now he's stuck.

8 THE COURT: I know Ms. Armijo is doing the
9 questioning. If you were to lead him, what
10 questions would you ask?

11 MR. CASTELLANO: I would say: Among other
12 reasons that you've already told us, isn't it true
13 that you felt, since you were by yourself, you were
14 going to be the test case, or you would go to trial
15 and everyone else didn't --

16 THE COURT: I think that question is
17 proper.

18 MR. CASTELLANO: -- in these proceedings
19 and get a view of what the witnesses would say,
20 and --

21 THE COURT: I'm going to allow the
22 question.

23 MR. CASTELLANO: And we don't even see it,
24 but would the Court be willing to review the joint
25 defense agreement?

1 THE COURT: If they want me to see it. I
2 just don't think that this violates any sort of
3 joint defense. I think you get a right to discuss
4 it, but I don't think that means that evidence is
5 not permissible at trial.

6 MR. CASTELLANO: I would ask the Court to
7 review the agreement. We don't know anything about
8 it. If the Court needs to understand the
9 parameters, I would ask the Court to review it.

10 THE COURT: I'll look it at. If you limit
11 it to that question, that will be acceptable.

12 MS. DUNCAN: I was having trouble hearing,
13 so I may have to repeat some stuff. It was up to
14 the Government to decide who went first, and they
15 decided 4269 went first. So in terms of it being a
16 test case, that was the Government's decision. And
17 any conversations about whether the defendants were
18 looking forward to 4269 --

19 THE COURT: Can you leave out the words
20 "test case." Can you think of another way to phrase
21 it?

22 MR. CASTELLANO: In other words, he could
23 be asked, "You were going to trial by yourself. Any
24 other defense attorney could come in and watch your
25 case and get a preview of what the witnesses might

1 say. And that potentially could aid them in their
2 cases."

3 THE COURT: Why don't you go ahead and
4 just ask him an open-ended question about why he did
5 it, and I think, by leading, probably characterizing
6 it in a way that --

7 MR. LOWRY: I don't want to belabor this
8 bench conference, but Mr. Baca didn't raise this
9 issue, and now we're stuck with, you know, the
10 flotsam of the decision of a co-defendant to go
11 forward. If this kind of prejudicial information is
12 going to come in against Mr. Baca, I'm going to have
13 to move for a mistrial. I know you don't want to
14 hear that yet again. But this is unfair and limits
15 his rights to a fair trial.

16 THE COURT: All right. Let's go ask the
17 question.

18 (The following proceedings were held in
19 open court.)

20 THE COURT: All right, Ms. Armijo.

21 BY MS. ARMIJO:

22 Q. Mr. Rodriguez, yesterday you were asked a
23 question about why you decided to cooperate right
24 before going to trial in your other case. And I'm
25 going to ask you a couple of questions about that.

1 Now, first off, as the plea agreement
2 indicates, you had another case that was pending
3 trial; is that correct?

4 A. Other than the one I was going for that
5 day?

6 Q. No. I mean other than the one that you
7 were -- let me back up. You were indicted in two
8 separate cases; correct?

9 A. That's correct.

10 Q. And I believe we've talked about how you
11 went to trial or you went to court on October 24 to
12 another case that doesn't involve these defendants
13 here; correct?

14 A. That's correct.

15 Q. And in that case there were at least three
16 other people that were indicted with you that had
17 pled guilty, and you were the only one left;
18 correct?

19 A. That's correct.

20 Q. Okay. And I believe you had started to
21 say something yesterday as far as what was your --
22 why you decided to cooperate at that point in time
23 when you were getting ready to go to trial. Do you
24 recall that?

25 A. As to why?

1 Q. Yes. Was there a reason why you decided
2 to cooperate then, when you were getting ready to go
3 to trial by yourself?

4 A. There was a point in time where Mauricio
5 Varela took a plea, he was no longer coming to court
6 with me, and I just wanted out.

7 Q. Okay. And if you went to trial, you were
8 going to be going to trial alone?

9 A. In that case, yes.

10 Q. Okay. And did you have a feeling -- and
11 this is your own feelings -- did you have a feeling
12 as to whether or not that trial was going to be used
13 as a test for what the Government's evidence was?

14 A. Yes. It was going to be a test run to see
15 how the Government approached the next cases, the
16 next VICAR cases, and it was a test run at my
17 expense.

18 Q. And did you like that?

19 A. I did not like that.

20 Q. Did that come into play in your decision
21 to possibly cooperate?

22 A. That, and that the other defendants
23 thought it was funny, and that it was a test run
24 saying, "Okay, you're just going to get 30 years.
25 That's okay."

1 I'm like, "I'm on in-house parole. You
2 guys are doing life sentences, you know."

3 Q. When you say "in-house parole," what is it
4 that you mean?

5 A. It means my state time was complete.

6 Q. So if -- other than this case, could you
7 have been out on the streets?

8 A. I would have been out on the streets, yes.

9 Q. Now you were also asked about -- I believe
10 Mr. Lowry was asking you questions about your
11 conversation with Mr. Baca this morning, and I
12 believe you had indicated that Mr. Baca had told you
13 he wanted to kill Jeffrey Madrid?

14 A. Yes.

15 Q. Okay. Can you explain that?

16 A. He was in the hole, in segregation in the
17 Southern correctional facility, and he believed that
18 he was in there.

19 Q. Who is "he"?

20 A. Pup, Anthony Baca.

21 Q. Okay.

22 A. He was in the hole, what he told me later
23 after the fact.

24 Q. What's the hole?

25 A. The hole is where you get in trouble, they

1 send you to solitary confinement. It's a temporary
2 housing for disciplinary reasons and CI material.
3 Someone drops a kite on you, CI material, your life
4 is in danger, you're put into the hole for the
5 investigation process to see if the CI is credible,
6 reliable.

7 Q. And without getting into what Mr. Baca
8 told you as far as his beliefs, did he tell you
9 whether or not -- something in reference to Jeffrey
10 Madrid?

11 A. Yes, that he asked another inmate to
12 provide another SNM member with a weapon and to
13 proceed to stab Jeffrey Madrid.

14 Q. Now, Mr. Lowry also talked to you about
15 politics. And within the SNM, are there politics
16 within the SNM?

17 A. Yes, ma'am.

18 Q. Does that make it a different
19 organization, or is it still one organization?

20 A. It's just one organization.

21 Q. Now you also were asked, I believe by
22 Ms. Jacks but it could have been one of the other
23 attorneys, about how many people were left in
24 reference to this case that you actually had an
25 opportunity to testify against. Do you recall that?

1 A. Yes, ma'am.

2 Q. Okay. Other than the four people that we
3 have here in court today, are there still other
4 defendants pending trial?

5 A. There are, yes, ma'am.

6 Q. Are there numerous cases that are still
7 pending trial?

8 A. I believe there are.

9 Q. Mr. Lowry also talked to you about your
10 conversation with Mr. Baca in reference to the
11 Javier Molina incident.

12 A. Yes, ma'am.

13 Q. Do you recall that line of questioning?

14 A. While we were in the yard?

15 Q. Yes. In October of 2015.

16 A. Yes, ma'am.

17 Q. Did Mr. Baca also tell you that they had
18 done the right thing by hitting and killing Molina?

19 A. Yes, ma'am.

20 Q. And the Esparza incident that we saw the
21 video on. Now, I believe you were trying to explain
22 how that incident was related to SNM this morning.
23 Could you tell us how that's related to SNM?

24 A. How that incident is related to the SNM?

25 Q. Yes.

1 A. Well, I was an SNM member at the time.
2 That was 2008. So I got involved in the SNM in
3 2005, 2006. That's three years. And the SNM -- you
4 ain't really a verified SNM member until you spill
5 blood. And that was an issue that I thrived for. I
6 wanted to show my big homies that I was going to do
7 the violent acts and commit these acts of violence
8 for the SNM, and as well as for myself.

9 And when you commit these violent acts for
10 yourself and for the SNM, you're looked up to and
11 you're on your way up the ranks, and it's proving
12 moments. And the guy burned me as an SNM member.
13 He was going to make the SNM look weak as a whole,
14 and I went after him for that.

15 Q. I guess that's part of the next question
16 that I have. Are certain acts done for personal
17 reason but also for SNM?

18 A. Yes, ma'am.

19 Q. And was that an example of one of them?

20 A. The SNM is the top of the New Mexico gang
21 world. As an individual coming up in the gang
22 world, you want to commit these acts of violence to
23 get the eye of the SNM. And if you're not a member,
24 if you are a member, and you take it upon yourself
25 to go out of the ordinary against these guys and not

1 use other SNMers for your dirty laundry. If I have
2 an issue with someone outside SNM, it's my
3 responsibility to take it upon myself and assault
4 them or resolve it in a matter I feel fit.

5 The SNM doesn't necessarily have to tell
6 me to go after these individuals like that. And
7 when you are a member like that, a made member of
8 the SNM, it makes my street gang go up in value. It
9 makes the people that I associate go up in value,
10 and you want that. You want to prove that they can
11 rely on you for anything.

12 Q. Now, lastly, I believe Ms. Jacks went over
13 portions of the writings that you sent to Keith
14 Johnston. Do you recall that?

15 A. Yes, ma'am.

16 Q. When did you write those, approximately?

17 A. 2011 through the last two and a half years
18 I did after the Sosoya case. I met Mr. Keith
19 Johnson while I was on my 60-day segregation for
20 that incident.

21 Q. And that incident happened in 2011 with
22 Mr. Sosoya?

23 A. Yes.

24 Q. So is everything that he has from the time
25 period of 2011?

1 A. It's from 2011 until I got out of solitary
2 confinement to the South facility in 2013.

3 Q. Okay.

4 A. It was a process. I was attempting to get
5 my GED. And I wrote an essay, and I began a
6 friendship with him based on my writing.

7 Q. And you said you did it as part of
8 obtaining your GED?

9 A. They asked me if I could write, and I
10 said, "I'll try it."

11 They said, "Let's see how you write on an
12 essay."

13 I wrote an essay about who you would like
14 to be for a year if you could be anyone in the
15 world, who would you would want to be for one year.
16 I wrote about a hippie named Dev. I made up a
17 character from someplace in North Dakota, and I got
18 a lot of reviews, and the teacher started to come
19 see me at my house.

20 Q. Did you end up getting your GED?

21 A. I did, twice.

22 Q. Now, was Ms. Jacks -- I believe the last
23 thing that she was asking you about is, she took a
24 line that you said that you wrote about
25 relationships.

1 A. That's correct.

2 Q. Okay. What relationships were you
3 referring to in that?

4 A. To my son's mother and my son.

5 Q. Did that have anything to do with SNM?

6 A. No.

7 Q. Or anything else?

8 A. It had to do with me and my solitary
9 confinement time and my two phone calls a month and
10 how I was trying to begin a more in-depth
11 relationship with them. And I didn't think they
12 were taking the two calls a month very seriously,
13 and I wasn't getting nothing out of the
14 relationships; and rather than being hurt, I would
15 just like nothing to do with them. It was causing a
16 lot of pain that I couldn't get them to open up as I
17 was trying to open up.

18 MS. ARMIJO: May I just have a moment,
19 Your Honor?

20 THE COURT: You may.

21 BY MS. ARMIJO:

22 Q. You were also asked if you wrote a letter
23 for Mr. Armenta. Do you recall that?

24 A. Yes, I recall the question.

25 Q. Did you write a letter for Mr. Armenta?

1 A. No, I did not.

2 Q. Did you ever have a conversation with him
3 about accepting responsibility?

4 A. I don't think I did, no.

5 Q. All right.

6 MS. ARMIJO: And Your Honor, at this time
7 the United States would move into admission
8 Government's Exhibit 755.

9 THE COURT: Any objection? I think that's
10 the chart, a continuation of the chart.

11 MR. LOWRY: We'd ask for a limiting
12 instruction for the statements of --

13 THE COURT: Ms. Armijo I think was careful
14 on a couple of statements to limit those to certain
15 individuals. So when you look at the chart, you'll
16 see their initials. Those are the only ones that
17 you can use them against. That's the way it was
18 written. Right, Ms. Armijo?

19 MS. ARMIJO: Yes, Your Honor.

20 THE COURT: The rest of them can be used
21 against all the defendants, but those other ones are
22 only to be used against the defendant with the
23 initials there.

24 Not hearing any objection, the Court will
25 admit Government's Exhibit 755.

1 (Government Exhibit 755 admitted.)

2 BY MS. ARMIJO:

3 Q. And did you at any point in time that you
4 recall tell Mr. Armenta to accept responsibility for
5 other people or for himself or anything, if you
6 recall? And if you don't recall, that's fine.

7 A. I think I -- when there was a point in
8 time where I told him he was going to take the rap.
9 I think there was a point of time, something like
10 that. And then Jerry Armenta and Timothy Martinez
11 went along with whatever they were going to do.

12 Q. Were you really a part of that?

13 A. I was not.

14 MS. ARMIJO: Nothing further. Thank you.

15 THE COURT: Thank you, Ms. Armijo.

16 Ms. Jacks, did you want to recross?

17 MS. JACKS: I do, but since I went last, I
18 probably should go last on recross.

19 THE COURT: All right. Mr. Villa.

20 MR. VILLA: Yes, Your Honor.

21 THE COURT: Mr. Villa.

22 RECROSS-EXAMINATION

23 BY MR. VILLA:

24 Q. Good afternoon, Mr. Rodriguez.

25 A. Good afternoon.

1 Q. So the statement, Number 14, the
2 conversation that you had with Mr. Perez about this
3 not being his first rodeo -- do you remember that?

4 A. Yes.

5 Q. I think you recall from yesterday your
6 testimony was that you had only been in the blue pod
7 with Mr. Perez for about three months before Molina
8 happened; right?

9 A. That's correct.

10 Q. Before that, you'd never met him before?

11 A. That's correct.

12 Q. So you don't know whether he'd been in
13 situations in a pod where somebody had been hurt or
14 killed and they had cleared the whole pod out?

15 A. Yes.

16 Q. You don't know that?

17 A. Yes, I do know. Well, not in the state of
18 New Mexico, no.

19 Q. But for Mr. Perez?

20 A. Yes.

21 Q. I mean, you haven't been with him when a
22 pod got cleared out in other situations?

23 A. No.

24 Q. And you agree with me that when you get
25 cleared out of the pod, they're moving you to a

1 whole different pod; right?

2 A. It's not very common.

3 Q. I understand that.

4 A. Right.

5 Q. But when it happens -- and it happened in
6 this case -- they moved everybody out of the pod;
7 right?

8 A. Yeah. I didn't know at the time. I
9 thought just myself and Armenta was moved out.

10 Q. You didn't realize that everybody had
11 been --

12 A. No, I did not know.

13 Q. When you get moved to a new pod, you don't
14 have any of your stuff?

15 A. That's correct.

16 Q. You don't have your clothes or your TV or
17 anything like that?

18 A. That's correct.

19 Q. Now, going back to the statement -- let's
20 see here. On Government's Exhibit 755, Number 4, on
21 the first page when you're in Mr. Perez' room,
22 taking the piece from the walker, and Mr. Perez
23 says, "I'm down for whatever as long as it's not
24 me"; right?

25 A. Right.

1 Q. And you told Agent Stemo, did you not,
2 that you understood Mr. Perez to mean that he did
3 not want to be hurt and would go along with the hit
4 if he did not otherwise have to be involved?

5 A. Yes. That was my assumption.

6 Q. That's what you understood from that
7 statement?

8 A. From that statement, that's what I assumed
9 he meant.

10 MR. VILLA: May I have a moment?

11 THE COURT: You may.

12 MR. VILLA: No further questions, Your
13 Honor.

14 THE COURT: Thank you, Mr. Villa.

15 Ms. Bhalla.

16 MS. BHALLA: Thank you, Your Honor.

17 RECROSS-EXAMINATION

18 BY MS. BHALLA:

19 Q. Mr. Rodriguez, Ms. Armijo asked you about
20 the plot or the plan on my client's life; is that
21 correct?

22 A. Yes, she did.

23 Q. You were going to participate in that
24 plan, weren't you?

25 A. Partly, yes.

1 Q. Yes. And you described yourself as a
2 leader at the time, didn't you?

3 A. I was a high-ranking member at the time.

4 Q. And you testified, I believe recently,
5 that the reason -- part of the reason that you
6 stabbed Mr. Esparza was that he had burned you; is
7 that right?

8 A. That's correct.

9 Q. And you believe that Carlos Herrera burned
10 you, didn't he?

11 A. No.

12 Q. Do you recall explaining to Ronald Sanchez
13 in that meeting that Carlos Herrera had called you a
14 bitch?

15 A. I don't think he called me a bitch in the
16 meeting. In the wiretap, right, I remember him
17 saying that, that he called me a bitch, yes.

18 Q. And you explained to Ronald Sanchez that
19 he called you a punk?

20 A. No, I don't recall that.

21 Q. Would you like to take a look at the
22 transcript?

23 A. Yeah, I would, yes.

24 MS. ARMIJO: May we have a page?

25 MS. BHALLA: May I approach, Your Honor?

1 THE COURT: You may.

2 BY MS. BHALLA:

3 Q. Can you read that?

4 A. "Blue ain't worth a fuck. He's a bitch,
5 this and that."

6 Q. And that's what you told to Ronald
7 Sanchez; is that correct?

8 A. Yes. It has nothing do with a punk.

9 Q. Okay. And you also spoke with Agent Acee
10 on November 1st; is that correct?

11 A. That's correct.

12 Q. And you explained to Agent Acee that you
13 felt like Carlos was elevating himself to somebody
14 that he really wasn't. Is that fair to say?

15 A. In the audio with Billy Cordova, yes.

16 Q. And he was taking credit for things he
17 hadn't done; is that right?

18 A. That's correct.

19 Q. And that would be the Molina murder;
20 right?

21 A. No.

22 Q. No. Okay. And you explained to Agent
23 Acee that the information on the tablet highlighted
24 everything; is that correct?

25 A. The information on the tablet highlighted

1 everything as far as what?

2 Q. About why Carlos Herrera needed to be
3 murdered.

4 A. Oh, yes, about --

5 Q. That's just a yes-or-no question.

6 A. Yes.

7 Q. Thank you. And you also explained to
8 Agent Acee that the recording popped up and he was
9 talking shit about Arturo Garcia; correct?

10 A. That's correct.

11 Q. And you also explained to Agent Acee that
12 you were angry with Carlos because he received some
13 paperwork regarding an inmate named Peter Stevens;
14 is that correct?

15 A. That's correct.

16 Q. And he had it thrown away, didn't he?

17 A. Someone else threw it away. He gave it to
18 another individual, and that individual threw it
19 away.

20 Q. Do you recall actually correcting this 302
21 for Mr. Acee?

22 A. May I see it?

23 Q. This report? Yeah, you can.

24 MS. BHALLA: Your Honor, may I approach?
25 I'm approaching with Bates No. 51516.

1 THE COURT: You may.

2 BY MS. BHALLA:

3 Q. Mr. Rodriguez, I'm going to refer you to
4 the note that you wrote right here. Take a second
5 to read that.

6 A. (Witness complies.) Which part do you
7 want me to take notice to? That has nothing do with
8 paperwork.

9 Q. Right here.

10 A. Okay. Yes.

11 Q. Those are your notes?

12 A. Those are my notes.

13 Q. And those notes indicate that Carlos
14 Herrera had the paperwork thrown away; is that
15 correct?

16 A. As well as the other individuals involved.

17 Q. And that was part of the reason that you
18 wanted to participate in the murder of Carlos
19 Herrera; is that correct?

20 A. No, that was far before the plot to kill
21 Carlos Herrera.

22 Q. That was far before the plot? It was part
23 of the reasons?

24 A. Yes.

25 Q. Okay. And you had told Agent Acee that

1 Carlos didn't do anything, didn't you?

2 A. He wasn't in the pod.

3 Q. And that he couldn't even do a burpee. I
4 think that that's what you told Mr. Ronald Sanchez.
5 Is that fair to say?

6 A. I don't recall that.

7 Q. Would you like to look at that transcript?

8 A. Yes, ma'am.

9 Q. You'll have to give me just a minute.

10 I think that Mr. Villa asked you some
11 questions about that, and you said that -- you said
12 some of the older guys were fat; right?

13 A. Out of shape?

14 Q. Yes.

15 A. A few of them.

16 Q. Yep, here we go. I'm going to direct you
17 to page 24.

18 A. This is the Ronald Sanchez interview?

19 Q. Yes.

20 A. Oh, yeah. About the hypochondriac?

21 Q. Isn't it true that you told everybody that
22 Carlos Herrera couldn't do a burpee?

23 A. Not everybody, no.

24 Q. Well, whoever was in that meeting?

25 A. Ronald Sanchez, yes.

1 Q. Okay. And that doesn't make him a very
2 good SNM member, does it, in your mind?

3 A. Everyone is good for something.

4 Q. Is that why they call him Lazy?

5 A. There you go. You hit it on the head,
6 right there.

7 MS. BHALLA: Thank you. Nothing further.

8 THE COURT: Thank you, Ms. Bhalla.

9 Mr. Lowry, do you have recross of Mr.
10 Rodriguez?

11 MR. LOWRY: Briefly, Your Honor.

12 THE COURT: Mr. Lowry.

13 RECROSS-EXAMINATION

14 BY MR. LOWRY:

15 Q. Mr. Rodriguez, again, this has been a
16 companion of yours for a couple of years.

17 A. Yes, sir.

18 Q. And through your study of the discovery
19 and all the documents in this case, you knew exactly
20 where and when everybody was being recorded.

21 A. Through the discovery?

22 Q. Correct.

23 A. Yes.

24 Q. You knew, when you were in the cell next
25 to Mr. Baca, you were being recorded?

1 A. I did not know. At the time? At the time
2 or after?

3 Q. Yeah.

4 A. When I hit the button? Yes.

5 Q. So when you gave your statements on the
6 3rd that you had a conversation with Mr. Baca in the
7 rec yard, you knew exactly where a microphone
8 wasn't.

9 A. There was microphones present. Rookie
10 Year was filming it.

11 Q. Well, the microphones that were used by
12 the confidential informants in this case?

13 A. After reviewing the discovery?

14 Q. Yeah.

15 A. Ask me the question again.

16 Q. Sure. You knew that when you were in your
17 cell talking to Mr. Baca, there was an individual
18 recording both of you.

19 A. After the fact.

20 Q. Correct.

21 A. Yes.

22 Q. So after the fact, you knew exactly where
23 to place yourself if you wanted to have a
24 conversation, in theory, that implicated Mr. Baca?

25 A. Are you saying that -- what are you

1 saying?

2 Q. I'm saying you knew where the microphones
3 were in the institution, on February 3, 2018?

4 A. No, I didn't -- oh, after the fact? We're
5 talking about after the fact, the discovery?

6 Q. On February 3, 2018, you knew where the
7 microphones were inside the facility; correct?

8 A. Correct.

9 MR. LOWRY: No further questions, Your
10 Honor.

11 THE COURT: Thank you, Mr. Lowry.
12 Ms. Jacks, do you have recross?

13 MS. JACKS: Just a little bit.

14 THE COURT: Ms. Jacks.

15 RECCROSS-EXAMINATION

16 BY MS. JACKS:

17 Q. Mr. Rodriguez, I just want to ask you a
18 couple of questions, to start off with, on
19 Government's Exhibit 755.

20 A. Okay.

21 Q. And that's sort of the enhanced timeline
22 where you added some things with Ms. Armijo.

23 A. Right. Okay.

24 Q. First of all, let's see, I want to direct
25 you to the first -- well, the first entry in red for

1 March 7, 2014. So this is referencing the
2 conversation that you say that you had on the way to
3 the yard through the door of yellow pod.

4 A. In the sally port, yes.

5 Q. Well, you're in the sally port, and I
6 guess you're saying that you spoke to Mr. Herrera in
7 that conversation; right?

8 A. Through the door, yes.

9 Q. I thought -- and maybe I'm wrong -- but I
10 thought that the testimony was that you had asked
11 Mr. Herrera about paperwork and he responded
12 regarding something about a syringe?

13 A. No.

14 Q. Okay.

15 A. I'll verify -- I'll clarify it. When I
16 asked him, "Ask Lupe if he has that," he thought I
17 was talking about the syringe. He goes, "Yeah,
18 yeah, yeah, he has it."

19 "No, not that. The paperwork."

20 Then he went back. He didn't know what I
21 was talking about when I asked him. So he went back
22 and talked to Lupe. Lupe was shaking his head and
23 he came back to the door, and he said, "Yeah, he has
24 that".

25 Q. Let me see if I can ask this properly. So

1 when you first said: "Do you have that," Mr.
2 Herrera thought "that" referred to a syringe?

3 A. Yes, because I had asked Lupe Urquizo
4 earlier the day that he showed up to the emergency
5 door, if he had still had a syringe.

6 Q. And so according to you, people knew that
7 you were interested in obtaining a syringe.

8 A. There was only one syringe in the unit, so
9 everyone was --

10 Q. Okay. So what was the syringe being used
11 for?

12 A. Suboxone.

13 Q. Injecting Suboxone intravenously?

14 A. Yes, ma'am.

15 Q. And I want to ask you about this entry
16 here. So I'm on page 2, and I'm on the Red
17 statement, Number 8.

18 A. Okay.

19 Q. I'll just give you a chance to orient
20 yourself. This is something I may have
21 misunderstood, and I want to clear it up. So it was
22 my understanding that your testimony was that you
23 made shanks and that you made them while the rest of
24 the unit was at the phone yard.

25 A. No, I began breaking them down. I

1 sharpened them during count.

2 Q. So you were continuing -- let's just see
3 if we can come to an understanding. You began --
4 your testimony is you began to make shanks while the
5 rest of the pod was at phone yard, and you completed
6 them while you were locked down for count.

7 A. That's correct.

8 Q. All right. I'm going to move to a new
9 topic. Ms. Armijo asked you some questions on
10 redirect about Mr. Sanchez' reaction when you say
11 that you and he looked at the paperwork. Do you
12 recall those questions?

13 A. I recall.

14 Q. And I think what you testified was he said
15 something like, "It's done"?

16 A. Yes.

17 Q. On January 2, 2018, when you were being
18 interviewed by Ms. Armijo and members of the FBI
19 just prior to trial, this was the visit or the
20 interview I think you forgot, and you thought you
21 were coming to testify, and it was just an
22 interview?

23 A. What's the date of it?

24 Q. January 22, 2018.

25 A. Yeah. Okay.

1 Q. Did you tell the Government during that
2 interview that when Mr. Sanchez saw the paperwork,
3 he wanted to hold off on the hit?

4 A. I think it was about the visit prior to
5 it. Remember, I told you he was talking about the
6 visit at the door. Then Lazy says, "Just get it
7 done." That's what that comment has in reference
8 to.

9 Q. So the answer to my question was, then,
10 that you did tell the Government that?

11 A. I did, yes.

12 Q. And Ms. Armijo asked you some questions
13 about a conversation that you had or that you're
14 saying that you had with Mr. Sanchez after you spoke
15 with Timothy Martinez. She asked you some questions
16 just a few minutes ago, and you talked about, "Oh,
17 yeah, I came back and talked to Mr. Sanchez at the
18 table"; right?

19 A. Right.

20 Q. And you said that what you were talking to
21 him about at that point was that there was a change
22 in plans.

23 A. That's correct.

24 Q. Okay. Have you previously talked to the
25 Government about what that conversation was with Mr.

1 Sanchez at the table? And specifically I'm
2 referring to that conversation that you see on the
3 videotape.

4 A. I'm telling him that Timothy is going to
5 choke him out.

6 Q. That's what your testimony is today.

7 A. That's correct.

8 Q. Right. But did you previously tell the
9 Government something different about that
10 conversation?

11 A. I don't recall.

12 Q. Did you tell the Government on October 24,
13 2017, that you met up briefly at the pod tables to
14 discuss setting up a spread?

15 A. Not at that time, no. That wasn't what
16 that conversation was about.

17 Q. On the video that encompasses the Molina
18 assault, you've watched that; right?

19 A. Yes.

20 Q. And during that video, is Mr. Sanchez
21 setting up what's called "a spread"?

22 A. No.

23 Q. Are you sure?

24 A. What is your reference to a spread?

25 Q. Getting ready to set up some food.

1 A. No.

2 Q. With other people at the pod table there?

3 A. There is no food on the table.

4 Q. Was he getting ready to set up a spread?

5 A. How would you get ready to set up a spread
6 in your description?

7 Q. I'm asking you.

8 A. No, he was not.

9 Q. Okay. You testified on redirect that
10 after Molina was assaulted, I think you said that
11 Mr. Sanchez yelled something through the top-tier
12 emergency door?

13 A. Yes, ma'am.

14 Q. Something along the lines of, "How do you
15 like that"?

16 A. "Baby."

17 Q. Okay, when you were interviewed by the
18 Government on October 24, 2017, did you tell them
19 anything about that?

20 A. I don't recall much about that day.

21 Q. Did you tell them anything about that on
22 November 1st of 2017?

23 A. November 1st with Acee?

24 Q. Right.

25 A. I would have to see the 302. I don't

1 know.

2 Q. Did you tell them anything about that on
3 December 12 of 2017?

4 A. Who was the interview with? Oh, with
5 Ronald Sanchez? That's the one with Ronald; right?

6 Q. Did you say anything during the interview
7 with Ronald?

8 A. No, ma'am.

9 Q. Did you say anything in the interview with
10 Task Force Officer Cupit and Captain Sapien on
11 December 12?

12 A. No, ma'am.

13 Q. When is the first time that you attributed
14 a comment like that to Mr. Sanchez?

15 A. It might have been either in the interview
16 with the prosecution people that I didn't recall or
17 the one on Saturday.

18 Q. Just recently?

19 A. Yes, ma'am.

20 Q. I just have a few questions about the
21 situation that you just talked about regarding sort
22 of the lead-up to your decision to become a
23 Government witness.

24 A. Okay.

25 THE COURT: Do you want to take this up

1 after our break?

2 MS. JACKS: Sure.

3 THE COURT: Let's be in recess for about
4 15 minutes. All rise.

5 (The jury left the courtroom.)

6 THE COURT: All right. We'll be in recess
7 for about 15 minutes.

8 (The Court stood in recess.)

9 THE COURT: All right. We'll go on the
10 record. Is there anything we need to discuss before
11 we bring the jury in, Ms. Armijo?

12 MS. ARMIJO: No, Your Honor.

13 THE COURT: How about from the defendants?
14 Anybody got anything?

15 MR. VILLA: No, Your Honor.

16 THE COURT: While we're waiting, I'm going
17 to add seven -- I think I talked to you about I need
18 names of the controlled substance in the
19 racketeering acts, but I also need to know what
20 witnesses are going to impeach other witnesses'
21 testimony through either reputation or opinion for
22 truthfulness. So both of you have -- no, I don't
23 think the Government did. I think it's the
24 defendants have that instruction. So if you're
25 going to use that, start giving me the names of the

1 people so I can put them in there.

2 MR. VILLA: Your Honor, do you want that
3 in the form of a pleading or an email?

4 THE COURT: You know, however you want to
5 get it to me. I'm just working on these
6 instructions. I'm going to try to give you a pretty
7 advanced set tomorrow. I doubt I'm going to master
8 these racketeering instructions by tomorrow, but the
9 rest of the framework I think will be pretty far
10 along.

11 Then if y'all start feeding me that, it
12 will save us a lot at the end, everybody trying to
13 recreate it. If you want to email it, I can file
14 it; or you can just send a letter. Whatever is
15 convenient.

16 MR. VILLA: Sounds good.

17 THE COURT: Remember, there are seven
18 categories now. There may be eight. I'll repeat
19 them tomorrow. I guess these have been judicial
20 suggestions up to this point, but they probably need
21 to become judicial directives at some point. But I
22 know y'all are busy. You've got a lot of stuff
23 going on.

24 MR. VILLA: We've just goofing off, Judge.

25 THE COURT: I never accused you of goofing

1 off, Mr. Villa.

2 Y'all have been a hard-working bunch.

3 I've enjoyed working with you. Good group.

4 (The jury entered the courtroom.)

5 THE COURT: All right. Everyone be
6 seated. I got permission from my wife to tell you
7 this story so I'm not going to be in trouble when I
8 go home.

9 But my wife had taken a new teaching job.
10 And she'd come from a private school where, if they
11 got up on a snow day, they just looked, and if it
12 was Albuquerque Public School, it was a snow day,
13 that private school took the day off.

14 The new school, on the other hand, never
15 had a snow day, but nobody told her. And so she
16 came in the next day and said, "Oh, wasn't it nice
17 to have a snow day." Everybody had to tell her they
18 didn't have a snow day.

19 I tell that story because if you get up in
20 the morning and you see the federal government is
21 shut down, you don't have a snow day. You've got to
22 come to work tomorrow. I'm going to give you the
23 information I have because I think you'll be
24 interested in it. But this is from James Duff, who
25 is our director of the Administrative Office of the

1 Courts out of Washington. This was sent on the 6th,
2 so it's actually two days old. But I've been
3 checking periodically during the day, and I'm not
4 sure they've reached an agreement now. So we're not
5 going to be together at midnight when the magic
6 occurs. But as far as the fiscal year 2018
7 continuing resolution extension, the current CR
8 expires at midnight this Thursday, February 8, 2018.
9 We're hopeful that Congress passes the six-week CR
10 extension through March 23, 2018. It is considering
11 this week to provide additional time to complete
12 work on fiscal year 2018 appropriations bill
13 including the judiciaries bill.

14 And then he puts in bold letters, "I
15 reiterate previous guidance that in the event a CR
16 extension is not enacted by midnight this Thursday,
17 most federal entities will have to implement
18 shutdown plans immediately. The judiciary, however,
19 will not shut down, and judiciary employees should
20 report to work as normal on Friday, February 9,
21 2018. Under a lapse in the appropriation scenario,
22 the judiciary would be able to sustain paid
23 operations through the use of our fee authority and
24 no year appropriations for approximately three
25 weeks, or through March 1, 2018. The judiciary has

1 sufficient fees and no year funding to cover
2 salaries and critical operating costs during such a
3 period, including costs incurred by the Supreme
4 Court, other national courts, the administrative
5 office, the federal judicial center, the US
6 sentencing guidelines, and federal defender
7 organizations, including community defender
8 organizations. Jury trials would continue and
9 jurors would be paid. Payments to Criminal Justice
10 Act panel attorneys can also continue subject to
11 available funding. If the CR extension is not
12 enacted, additional guidance for operating under a
13 lapse in appropriations will be provided early next
14 week."

15 And they're going to keep us updated on
16 the status of the fiscal year 2018 judiciary
17 appropriations. And I will keep you up, as well.
18 But I think we're in good shape to continue. So
19 whatever channels you watch and wherever you get
20 your news, if they tell you that the federal
21 government is shut down, Las Cruces Federal
22 Courthouse is not shut down. So come on back to
23 work, and we won't have a snow day tomorrow.

24 Okay. Thank you. You've been a good
25 bunch, and I appreciate it, and look forward to

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1 seeing you tomorrow.

2 All right. Mr. Rodriguez, I'll remind you
3 that you're still under oath.

4 THE WITNESS: Yes, sir.

5 THE COURT: Ms. Jacks, if you wish to
6 continue your recross, you may do so at this point.

7 BY MS. JACKS:

8 Q. Mr. Rodriguez, I just have one more line
9 of questioning for you, and that's in regards to the
10 situation surrounding your decision to become a
11 Government witness as it relates to your own trial.
12 And you were asked some questions about that by Ms.
13 Armijo, so I just have a few for you.

14 A. Okay.

15 Q. First of all, who sets the trial dates in
16 these cases?

17 A. I'm not aware.

18 Q. Judge Browning.

19 A. Oh, Judge Browning.

20 Q. And the Court sets trial dates at the
21 request of the Government, doesn't it? Or do you
22 know?

23 A. I do not know the procedures of it.

24 Q. Okay. Did the Court determine the order
25 in which the various cases would be tried?

1 A. I believe they did.

2 Q. And specifically referring to your case --
3 and I'm talking about the one that was supposed to
4 start trial I think in -- was it in late October or
5 early November?

6 A. No. I think it was a week, the following
7 week after October 24.

8 Q. So probably like on Halloween, or sometime
9 around Halloween in 2017?

10 A. It was a holiday on a Friday, I think. It
11 was going to begin on a Monday.

12 Q. And that was the trial involving the
13 Sosoya assault?

14 A. Yes, ma'am.

15 Q. In that case, isn't it true that the
16 attorney for your co-defendant, before he ended up
17 pleading guilty, had actually asked for a
18 continuance?

19 A. Which co-defendant?

20 Q. I think it was Mr. Mauricio Varela's
21 attorney?

22 A. No, he was not my co-defendant.

23 Q. Was Mr. Varela charged in that case?

24 A. He was charged in that indictment.

25 Q. And he was charged in that indictment, but

1 not with the same counts?

2 A. There was two different cases in that
3 indictment.

4 Q. Let's just be clear. It was one
5 indictment and one case number; right?

6 A. Two case numbers. One indictment with two
7 different charges. Two different incidents.

8 Q. That's what I wanted. So there was one
9 indictment and there was going to be one trial. But
10 there were at least two different assaults that were
11 going to be tried.

12 A. Yes, ma'am.

13 Q. And the lawyer for Mr. Varela who was
14 charged in a different assault -- I think he was
15 charged in the Silva assault?

16 A. That's correct.

17 Q. That lawyer actually asked the Court and
18 filed with the Court for a continuance of the trial.
19 Do you recall that?

20 A. I do not.

21 Q. Well, do you recall that when she did file
22 for a continuance, that you opposed, you and your
23 lawyer opposed a continuance?

24 A. Yes.

25 Q. And that was sometime prior, earlier in

1 October of 2017. Maybe even in September.

2 A. I don't know the dates, but it had to be
3 before October 24.

4 Q. And you do now recall that you guys
5 actually objected to the continuance, and stated
6 that you wanted to go to trial?

7 A. Under -- yes.

8 Q. Okay. And at some point after that, did
9 you become aware that your lawyer didn't seem like
10 he was ready to go to trial?

11 A. No, he seemed ready.

12 Q. Did -- so you're saying you had no
13 concerns about whether your case was ready, and
14 whether your lawyer was ready to proceed to trial?

15 A. I felt that I was going to win that case.

16 Q. And so at some point you changed your mind
17 and decided not to go to trial.

18 A. That's correct.

19 Q. And you did that right before the trial
20 was supposed to start?

21 A. That's correct.

22 Q. And was at least the added pressure on you
23 on the eve of trial part of the decision that led
24 you to become a Government witness?

25 A. What pressure?

1 Q. Maybe I'm assuming. You didn't feel any
2 pressure?

3 A. Pressure to give my life to the SNM?
4 Yeah, I didn't want to give them the rest of my
5 life.

6 Q. I think when Ms. Armijo was asking you
7 questions, you talked about the fact that you didn't
8 have -- you felt like you didn't have that much more
9 time to do; right?

10 A. That's correct.

11 Q. And you were looking at, if you lost, if
12 you went to trial and lost, you were looking at a
13 potential sentence of 30 years.

14 A. If you check my history, that's never been
15 an issue with me.

16 Q. So your testimony is: The fact that you
17 were sort of short-timing and all of a sudden
18 looking at a 30-year sentence -- that did not
19 contribute -- that wasn't any sort of pressure that
20 led you to become a Government witness?

21 A. No, ma'am.

22 MS. JACKS: Thank you. I have nothing
23 further.

24 THE COURT: Thank you, Ms. Jacks.

25 Ms. Armijo, do you have redirect?

1 REDIRECT EXAMINATION

2 BY MS. ARMIJO:

3 Q. I believe you just said that the pressure
4 you felt was the pressure to give your life to SNM?

5 A. That's correct.

6 Q. I want to briefly touch on a couple of
7 things. The Ronald Sanchez has been described by
8 the defense as an interview. Was that an interview?

9 A. I don't believe it was an interview.

10 Q. And who wanted to meet with the FBI?

11 A. Ronald Sanchez.

12 Q. And they also talked about a meeting with
13 Chris Cupit and Sergio Sapien. Did that have
14 anything to do with this case, or was that separate?

15 A. That had to do with --

16 MS. JACKS: Objection. Calls for the
17 conclusion. I don't think this witness is in the
18 position to know.

19 THE COURT: Well, ask him if he knows.
20 Lay some foundation.

21 BY MS. ARMIJO:

22 Q. Let me ask you this. Was it about your
23 testimony?

24 A. Somewhat, yes.

25 Q. Was the prosecution team there?

1 A. No.

2 Q. Now, in reference to -- how many years
3 before you decided to cooperate -- how many years
4 had you been an SNM member?

5 A. Since 2005.

6 Q. All right. So approximately 12 years?

7 A. According to -- 2017? Yeah, 12 years.

8 Q. Is it easy to cover all of your SNM
9 activities of 12 years in interviews that are a few
10 hours long?

11 A. No.

12 Q. And you were asked by Ms. Bhalla about
13 Carlos Herrera and whether or not he did anything.
14 I believe you indicated that everyone is good for
15 something; is that correct?

16 A. That's correct.

17 Q. And when you said that, were you referring
18 to the SNM?

19 A. Yes.

20 Q. Did Carlos Herrera give you the paperwork?

21 A. Yes, he did.

22 Q. Was that paperwork necessary to kill
23 Javier Molina?

24 A. Yes, it is.

25 Q. And lastly, over the past couple days that

1 you've been testifying, is what you've told us the
2 truth?

3 A. It is.

4 MS. ARMIJO: No further questions.

5 THE COURT: Thank you, Ms. Armijo.

6 All right. Mr. Rodriguez, you may step
7 down.

8 Is there any reason that Mr. Rodriguez
9 cannot be excused from the proceedings, Ms. Armijo?

10 MS. ARMIJO: Your Honor, I believe we were
11 still going to have him available, because there was
12 one incident at the bench that we need to address.

13 THE COURT: All right. You may need to be
14 re-called, but you'll need to stay, of course,
15 outside of the courtroom. But you're free to leave
16 the courthouse now.

17 THE WITNESS: Thank you, Your Honor.

18 MR. LOWRY: The admonishment of the
19 witness?

20 THE COURT: Mr. Rodriguez, since you're
21 subject to re-call, you're not to discuss your
22 testimony or this case with anyone. So don't do
23 that, wherever you go and whoever you're talking to.

24 THE WITNESS: Okay, Your Honor.

25 THE COURT: Thank you, Mr. Rodriguez.

1 UNITED STATES OF AMERICA

2 STATE OF NEW MEXICO

3

4 C-E-R-T-I-F-I-C-A-T-E

5 I, Jennifer Bean, FAPR, RDR, CRR, RMR, CCR,
6 Official Court Reporter for the State of New Mexico,
7 do hereby certify that the foregoing pages
8 constitute a true transcript of proceedings had
9 before the said Court, held in the District of New
10 Mexico, in the matter therein stated.

11 In testimony whereof, I have hereunto set my
12 hand on this 15th day of March, 2018.

13

14

15 _____
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